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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0277; Product Identifier 2017–NM–124–AD; Amendment 39–19364; AD 2018–17–10]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

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

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2017–15–17, which applied to certain Airbus Model A300 B4–600R series airplanes, Model A300 C4–605R Variant F airplanes, and Model A300 F4–600R series airplanes. AD 2017–15–17 required an inspection of the lower area of a certain frame (FR) radius for cracking, and corrective action if necessary. This AD requires new repetitive inspections of the forward fitting lower radius of a certain frame for cracking, and corrective actions if necessary. This AD was prompted by a determination that repetitive inspections and applicable corrective actions are necessary. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective September 24, 2018.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 5, 2017 (82 FR 35644, August 1, 2017).

ADDRESSES: For service information identified in this final rule, contact Airbus SAS, Airworthiness Office—EAW, Rond-Point Emile Dewoitine No: 2, 31700 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–2018–0277.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0277; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations (phone: 800–647–5527) is in the **ADDRESSES** section.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3225.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2017–15–17, Amendment 39–18977 (82 FR 35644, August 1, 2017) (''AD 2017–15–17''). AD 2017–15–17 applied to certain Airbus Model A300 B4–600R series airplanes, Model A300 C4–605R Variant F airplanes, and Model A300 F4–600R series airplanes. The NPRM published in the **Federal Register** on April 17, 2018 (83 FR 16787). The NPRM was prompted by a determination that new repetitive inspections of the lower area of a certain frame radius for cracking, and corrective actions are necessary. The NPRM proposed to require an inspection of the lower area of a certain frame radius for cracking, and corrective action if necessary. The NPRM also proposed to add new repetitive inspections of the lower area of a certain frame radius for cracking, and corrective actions if necessary. We are issuing this AD to detect and correct cracking in the forward fitting lower radius of a certain frame. Such cracking could reduce the structural integrity of the fuselage.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2017–0158, dated August 25, 2017 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus SAS Model A300 B4–600R series airplanes, Model A300 C4–605R Variant F airplanes, and Model A300 F4–600R series airplanes. The MCAI states:

> Following a full stress analysis of the Frame (FR) 40 lower area, supported by a Finite Element Model (FEM), of the post-mod [modification] 10221 configuration, it was demonstrated that, for the FR40 forward fitting lower radius, a crack could occur after a certain number of flight cycles (FC).
>
> This condition, if not detected and corrected, could reduce the structural integrity of the fuselage.
>
> To address this potential unsafe condition, Airbus established that crack detection could be achieved through a special detailed inspection (SDI) using a high frequency eddy current (HFEC) method, and issued Alert Operators Transmission (AOT) A57W009–16 to provide those inspection instructions.
>
> Consequently, EASA issued AD 2016–0085 to require a one-time SDI of the FR40 lower area and, depending on findings, accomplishment of applicable corrective action(s). After that [EASA] AD was issued, further cracks were detected, originating from the fastener hole, and, based on these findings, it was determined that the inspection area must be enlarged, and Airbus issued AOT A57W009–16 Revision (Rev.) 01 accordingly. Consequently, EASA issued AD 2016–0179 [which corresponds to FAA AD 2017–15–17], retaining the requirements of EASA AD 2016–0085, which was superseded, to extend the area of inspection, and to require an additional inspection for aeroplanes that were previously inspected.
>
> The one-time SDI for high cycle A300–600 aeroplanes was intended to mitigate the highest risks within the fleet, pending development of instructions for repetitive inspections.
>
> Since EASA AD 2016–0179 was issued, Airbus published SB A300–57–6120 * * * [for] the inspection programme for A300–600 * * * post-mod 10221 * * * [airplanes]. The AOT one-time inspection is superseded by these repetitive inspection SBs. These SBs include alternative inspection methods and repair solutions in case of findings together with the associated inspection programme.
>
> For the reasons described above, this [EASA] AD retains the requirements of EASA AD 2016–0179, which is superseded, * * * and defines new inspections methods with

new compliance times, including repetitive inspections, depending on the aeroplane inspection status.

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–2018–0277.

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 final rule as proposed, except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for addressing 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

Airbus SAS has issued Service Bulletin A300–57–6120, dated April 28, 2017. This service information describes procedures for repetitive inspections of the forward fitting lower radius of FR 40 for cracking, and corrective action. 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 94 airplanes of U.S. registry.

The actions required by AD 2017–15–17, and retained in this AD, take about 4 work-hours per product, at an average labor rate of $85 per work-hour. Based on these figures, the estimated cost of the actions that are required by AD 2017–15–17 is $340 per product.

We also estimate that it takes about 4 work-hours per product to comply with the new requirements of this AD, including 1 work-hour per product for reporting. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD on U.S. operators to be $39,950, or $425 per product.

We have received no definitive data that enables us to provide cost estimates for the on-condition actions specified in this AD.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this AD is 2120–0056. The paperwork cost associated with this AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at 800 Independence Ave. SW, Washington, DC 20591, ATTN: Information Collection Clearance Officer, AES–200.

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 removing Airworthiness Directive (AD) 2017–15–17, Amendment 39–18977 (82 FR 35644, August 1, 2017), and adding the following new AD:

2018–17–10 Airbus SAS: Amendment 39–19364; Docket No. FAA–2018–0277; Product Identifier 2017–NM–124–AD.

(a) Effective Date

This AD is effective September 24, 2018.

(b) Affected ADs

This AD replaces AD 2017–15–17, Amendment 39–18977 (82 FR 35644, August 1, 2017) (''AD 2017–15–17'').

(c) Applicability

This AD applies to Airbus SAS airplanes, certificated in any category, identified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD, on which Airbus SAS Modification 10221 was embodied in production.

(1) Airbus SAS Model A300 B4–605R and B4–622R airplanes.

(2) Airbus SAS Model A300 C4–605R Variant F airplanes.

(3) Airbus SAS Model A300 F4–605R and F4–622R airplanes.

(d) Subject

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

(e) Reason

This AD was prompted by the detection of cracking that originated from the fastener holes in the forward fitting lower radius of frame (FR) 40. We are issuing this AD to detect and correct cracking in the forward fitting lower radius of FR 40. Such cracking could reduce the structural integrity of the fuselage.

(f) Compliance

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

(g) Definitions

(1) For the purpose of this AD, the average flight time (AFT) can be established by dividing the flight hours (FHs) by the flight cycles (FCs) counted:

(i) From first flight, for selecting the inspection threshold of the non-repaired area.

(ii) From repair, for selecting the inspection threshold of the repaired area.

(iii) From the last inspection, for selecting the inspection interval.

(2) For the purpose of this AD, Group 1 airplanes are those airplanes already inspected in accordance with paragraph 4.2.2 in Alert Operators Transmission (AOT) A57W009–16, Revision 01, dated July 13, 2016, before the effective date of this AD. Group 2 airplanes are those airplanes not inspected in accordance with paragraph 4.2.2 in AOT A57W009–16, Revision 01, dated July 13, 2016, as of the effective date of this AD.

(3) For the purpose of this AD, inspection method A is a high frequency eddy current (HFEC) inspection of the radius and fastener area. Inspection method B is a HFEC inspection of the radius and fastener area and a rototest of the fastener hole. Both are defined as a special detailed inspection (SDI) in this AD.

(h) Repetitive Inspections for Non-Repaired Areas

Within the compliance time values specified in table 1 to paragraph (h) of this AD (Group 1 airplanes) or table 2 to paragraph (h) of this AD (Group 2 airplanes), as applicable, and, thereafter, at intervals not exceeding the values specified in table 3 to paragraph (h) of this AD: Do a SDI for cracking of any non-repaired radius, fastener areas, and fastener holes, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–57–6120, dated April 28, 2017; except where Airbus Service Bulletin A300–57–6120, dated April 28, 2017, specifies contacting Airbus SAS for appropriate action, before further flight, obtain instructions using the procedures specified in paragraph (m)(2) of this AD and accomplish those instructions.

BILLING CODE 4910–13–P

Table 1 to Paragraph (h) of this AD – *Group 1 Inspection Thresholds – Non-repaired Areas*

AFT	**Compliance Time** (whichever occurs later, A or B)
Greater than 1.5	**A:** Before exceeding 14,700 FC or 31,900 FH since first flight of the airplane, whichever occurs first. **B**: Within 1,900 FC or 4,300 FH, whichever occurs first after the one-time inspection performed as per Airbus AOT A57W009-16, Revision 01, dated July 13, 2016.
1.5 or less	**A:** Before exceeding 15,900 FC or 23,900 FH since first flight of the airplane, whichever occurs first. **B**: Within 2,100 FC or 3,200 FH, whichever occurs first after the one-time inspection performed as per Airbus AOT A57W009-16, Revision 01, dated July 13, 2016.

Table 2 to Paragraph (h) of this AD – *Group 2 Inspection Thresholds – Non-repaired Areas*

AFT	**Compliance Time** (whichever occurs later, A or B)
Greater than 1.5	**A:** Before exceeding 14,700 FC or 31,900 FH since first flight of the airplane, whichever occurs first. **B**: Within 12 months after the effective date of this AD, without exceeding (whichever occurs later): - 19,000 FC or 41,000 FH, whichever occurs first since airplane first flight. - 300 FC or 630 FH, whichever occurs first after September 5, 2017 (the effective date of AD 2017-15-17).
1.5 or less	**A:** Before exceeding 15,900 FC or 23,900 FH since first flight of the airplane, whichever occurs first. **B**: Within 12 months after the effective date of this AD, without exceeding (whichever occurs later): - 19,000 FC or 41,000 FH, whichever occurs first since airplane first flight. - 300 FC or 630 FH, whichever occurs first after September 5, 2017 (the effective date of AD 2017-15-17).

Table 3 to Paragraph (h) of this AD – *Repetitive Inspections – Non-repaired Areas*

Inspection Method	**Compliance Time** (not to exceed, whichever occurs first, FC or FH)	
	AFT greater than 1.5	AFT 1.5 or less
A	1,900 FC or 4,300 FH	2,100 FC or 3,200 FH
B	6,600 FC or 14,300 FH	7,100 FC or 10,700 FH

(i) Repetitive Inspections for Repaired Areas

Within the compliance time values specified in table 4 to paragraph (i) of this AD, and, thereafter, at intervals not exceeding those same values, do a SDI for cracking of the repaired radius, fastener areas, and fastener holes, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–57–6120, dated April 28, 2017; except where Airbus Service Bulletin A300–57–6120, dated April 28, 2017, specifies contacting Airbus SAS for appropriate action, before further flight, obtain instructions using the procedures specified in paragraph (m)(2) of this AD and accomplish those instructions.

Table 4 to Paragraph (i) of this AD – *Inspection Thresholds and Intervals – Repaired Areas*

Repair (Number)	**Compliance Time** (FC or FH, whichever occurs first after repair embodiment, or since last inspection, as applicable)	
	AFT greater than 1.5	AFT 1.5 or less
Stop Drilling (R53810799)	1,500 FC or 3,400 FH	1,700 FC or 2,500 FH
Cut-Out (R53810798)	4,500 FC or 9,800 FH	4,900 FC or 7,300 FH

BILLING CODE 4910–13–C

(j) Corrective Action

If any crack is found during any inspection required by paragraph (h) or (i) of this AD: Before further flight, repair in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–57–6120, dated April 28, 2017.

(k) Reporting

Submit a report of the findings (both positive and negative) of each inspection required by paragraphs (h) and (i) of this AD to Airbus SAS, in accordance with the instructions of Airbus Service Bulletin A300–57–6120, dated April 28, 2017, at the applicable time specified in paragraph (k)(1) or (k)(2) of this AD.

(1) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(l) Paperwork Reduction Act Burden Statement

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 1 hour per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW, Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(m) Other FAA AD Provisions

(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 (n)(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:* As of the effective date of this AD, 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 Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* Except as required by paragraphs (h) and (i) of this AD: If any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified 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 procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(n) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2017–0158, dated August 25, 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–2018–0277.

(2) For more information about this AD, contact Dan Rodina, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3225.

(o) 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.

(3) The following service information was approved for IBR on September 5, 2017 (82 FR 35644, August 1, 2017).

(i) Airbus Service Bulletin A300–57–6120, dated April 28, 2017.

(ii) Reserved.

(4) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAW, 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.*

(5) 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.

(6) 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 Des Moines, Washington, on August 9, 2018.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–17752 Filed 8–17–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2018–0290; Airspace Docket No. 18–AGL–9]

RIN 2120–AA66

Amendment of Class E Airspace; New Castle, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace extending upward from 700 feet above the surface at New Castle-Henry County Municipal Airport, New Castle, IN. This action is the result of an airspace review due to the decommissioning of the Richmond VHF omnidirectional range (VOR) navigation aid as part of the VOR Minimum Operational Network (MON) Program. The geographic coordinates of the airport are also updated to coincide with the FAA's aeronautical database.

DATES: Effective 0901 UTC, November 8, 2018. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

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

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

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends Class E airspace extending upward from 700 feet above the surface at New Castle-Henry County Municipal Airport, New Castle, IN, to support instrument flight rule operations at this airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (83 FR 17512; April 20, 2018) for Docket No. FAA–2018–0290 to amend Class E airspace extending upward from 700 feet above the surface at New Castle-Henry County Municipal Airport, New Castle, IN. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

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

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 modifies the Class E airspace extending upward from 700 feet above the surface to within a 6.4-mile radius (decreased from a 7-mile radius) at New Castle-Henry County Municipal Airport, New Castle, IN, and adds an extension 2.5 miles each side of the 267° bearing from the New Castle NDB extending from the 6.4-mile radius to 7.0 miles west of the NDB. The geographic coordinates of the airport are also being updated to coincide with the FAA's aeronautical database.

This action is necessary due to an airspace review caused by the decommissioning of the Richmond VOR as part of the VOR MON Program.

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

AGL IN E5 New Castle, IN [Amended]

New Castle-Henry County Municipal Airport, IN
(Lat. 39°52′36″ N, long. 85°19′31″ W)
New Castle NDB
(Lat. 39°52′48″ N, long. 85°19′08″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of New Castle-Henry County Municipal Airport, and within 2.5 miles each side of the 267° bearing from the New Castle NDB extending from the 6.4-mile radius to 7.0 miles west of the New Castle NDB.

Issued in Fort Worth, Texas, on August 13, 2018.

Walter Tweedy,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2018–17819 Filed 8–17–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2018–0044; Airspace Docket No. 17–ANM–35]

RIN. 2120–AA66

Establishment of Class E Airspace, Creswell, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace extending upward from 700 feet above the surface at Hobby Field, Creswell, OR, to accommodate new area navigation (RNAV) procedures at this airport, for the safety and management of instrument flight rules (IFR) operations.

DATES: Effective 0901 UTC, November 8, 2018. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

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

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

FOR FURTHER INFORMATION CONTACT: Richard Farnsworth, Federal Aviation Administration, Operations Support Group, Western Service Center, 2200 S 216th Street, Des Moines, WA, 98198–6547; telephone (206) 231–2244.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes Class E airspace extending upward from 700 feet above the surface at Hobby Field, Creswell, OR, to support IFR operations at the airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (83 FR 16256; April 16, 2018) for Docket No. FAA–2018–0044 to establish Class E airspace extending upward from 700 feet above the surface at Hobby Field, Creswell, OR. Interested

parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. Five comments were received in support of the action. One commenter had concerns that were not substantive to the establishment of Class E airspace. The concerns addressed the quality of the altimeter values reported by the Creswell Automated Weather Observing System (AWOS) and the potential for conflict with the visual flight rules (VFR) traffic pattern. The concerns regarding AWOS have been forwarded to the servicing System Support Center. The RNAV procedure at Hobby Field should only be used when the wind is favoring runway 16, so the VFR traffic pattern should shift to match.

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

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establishes Class E airspace extending upward from 700 feet above the surface at Hobby Field, Creswell, OR, to accommodate new RNAV procedures at this airport for the safety and management of IFR operations.

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ANM OR E5 Creswell, OR [New]

Hobby Field, OR
(Lat. 43°55′51″ N, long. 123°00′24″ W)

That airspace extending upward from 700 feet above the surface within a 2.1-mile radius of Hobby Field, and within 1.8 miles each side of the 354° bearing from the airport extending from the 2.1-mile radius to 7.1 miles north of the airport.

Issued in Seattle, Washington, on August 13, 2018.

Shawn M. Kozica,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2018–17821 Filed 8–17–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1

[Docket No. FDA–2012–D–1002]

Questions and Answers Regarding Food Facility Registration (Seventh Edition); Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of availability.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing the availability of a final guidance for industry entitled ''Questions and Answers Regarding Food Facility Registration (Seventh Edition).'' The guidance provides updated information relating to the food facility registration requirements in the Federal Food, Drug, and Cosmetic Act (FD&C Act).

DATES: The announcement of the guidance is published in the **Federal Register** on August 20, 2018.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2012–D–1002 for ''Questions and Answers Regarding Food Facility Registration (Seventh Edition).'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

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

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

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the guidance to the Office of Compliance, Division of Field Programs and Guidance, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Courtney Buchanan, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2487.

SUPPLEMENTARY INFORMATION:

I. Background

We are announcing the availability of a guidance for industry entitled ''Questions and Answers Regarding Food Facility Registration (Seventh Edition).'' This guidance provides updated information relating to the food facility registration requirements in the FD&C Act. We are issuing this guidance consistent with our good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on this topic. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

In the **Federal Register** of December 27, 2016 (81 FR 95068), we made available a draft guidance for industry entitled ''Questions and Answers Regarding Food Facility Registration (Seventh Edition)'' and gave interested parties an opportunity to submit comments by March 27, 2017, for us to consider before beginning work on the final version of the guidance. We received numerous comments on the draft guidance and have modified the final guidance where appropriate. In addition, we made editorial changes to improve clarity. The guidance announced in this notice finalizes the draft guidance dated December 2016.

FDA is also publishing elsewhere in this issue of the **Federal Register** notification of availability of a supplemental draft guidance document entitled ''Supplemental Questions and Answers Regarding Food Facility Registration'' that includes additional questions and answers to clarify our thinking about who should register in certain situations involving more than one possible registrant, such as a lessor and one or more lessees for an establishment. When the draft guidance is finalized, we intend to incorporate it into a future edition of the guidance document that is the subject of this notification.

II. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR 1.230 through 1.235 and 21 CFR 1.245 have been approved under OMB control number 0910–0502.

III. Electronic Access

Persons with access to the internet may obtain the guidance at either *https://www.fda.gov/FoodGuidances* or *https://www.regulations.gov.* Use the FDA website listed in the previous sentence to find the most current version of the guidance.

Dated: August 14, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–17853 Filed 8–17–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 295

[Docket ID: DOD–2017–OS–0024]

RIN 0790–AJ65

Office of the Inspector General, Freedom of Information Act Program

AGENCY: Office of Inspector General, DoD.

ACTION: Final rule.

SUMMARY: This final rule removes DoD's regulation concerning the Office of the Inspector General (OIG), Freedom of

Information Act program. On February 6, 2018, the DoD published a revised FOIA program rule as a result of the FOIA Improvement Act of 2016. When the DoD FOIA program rule was revised, it included DoD component information and removed the requirement for component supplementary rules. The DoD now has one DoD-level rule for the FOIA program that contains all the codified information required for the Department. Therefore, this part can be removed from the CFR.

DATES: This rule is effective on August 20, 2018.

FOR FURTHER INFORMATION CONTACT: Mark Dorgan at 703–604–9873.

SUPPLEMENTARY INFORMATION: It has been determined that publication of this CFR part removal for public comment is impracticable, unnecessary, and contrary to public interest since it is based on removing DoD internal policies and procedures that are publically available on the Department's website.

OIG internal guidance concerning the implementation of the FOIA within OIG will continue to be published in Inspector General Instruction 5400.7 (available at *http://www.dodig.mil/Portals/48/Documents/Policy/IGDINST%205400.7%20AIG-AM%20signed%204-16-10.pdf*).

This rule is one of 14 separate DoD FOIA rules. With the finalization of the DoD-level FOIA rule at 32 CFR part 286, the Department is eliminating the need for this separate FOIA rule and reducing costs to the public as explained in the preamble of the DoD-level FOIA rule published at 83 FR 5196–5197.

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

List of Subjects in 32 CFR Part 295

Freedom of information.

PART 295—[REMOVED]

■ Accordingly, by the authority of 5 U.S.C. 301, 32 CFR part 295 is removed.

Dated: August 15, 2018.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2018–17884 Filed 8–17–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2018–0781]

Special Local Regulation; Wheeling Vintage Regatta, Wheeling, WV

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a special local regulation for certain navigable waters of the Ohio River during the Wheeling Vintage Regatta on September 1, 2018 and September 2, 2018, to provide for the safety of persons, vessels, and the marine environment on the navigable waterways during this event. Our special local regulations for annual marine events in the Eighth Coast Guard District identify the regulated area for this event in Wheeling, WV. During the enforcement period, entry into this zone is prohibited unless authorized by the Captain of the Port Marine Safety Unit Pittsburgh or a designated representative.

DATES: The regulations in 33 CFR 100.801, Table 1, line 25, will be enforced from 9 a.m. to 6 p.m. each day from September 1, 2018 through September 2, 2018.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email Petty Officer Charles Morris, Marine Safety Unit Pittsburgh, U.S. Coast Guard; telephone 412–221–0807, email *Charles.F.Morris@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce a temporary special local regulation for the Wheeling Vintage Regatta in 33 CFR 100.801, Table 1, Sector Ohio Valley Annual and Recurring Marine Events, line 25 from 9 a.m. to 6 p.m. each day from September 1, 2018 through September 2, 2018. This action is being taken to provide for the safety of persons, vessels, and the marine environment on the navigable waters of the Ohio River during this event. Our regulation for marine events within the Eighth Coast Guard District, § 100.801, specifies the location of the regulated area for the Wheeling Vintage Regatta, which covers a one-mile stretch of the Ohio River. Persons and vessels must not enter the regulated area unless registered with the sponsor as participants, official patrol vessels, or authorized by the Captain of the Port Marine Safety Unit Pittsburgh (COTP) or a designated representative. Persons or vessels desiring to enter into or pass through the area must request permission from the COTP or a designated representative. They can be reached on VHF–FM channel 16. If permission is granted, all persons and vessel shall comply with the instructions of the COTP or designated representative.

In addition to this notice of enforcement in the **Federal Register**, the COTP or a designated representative will inform the public through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), Marine Safety Information Bulletins (MSIBs), and/or through other means of public notice as appropriate at least 24 hours in advance of each enforcement.

Dated: August 14, 2018.

A.W. Demo,

Commander, U.S. Coast Guard, Captain of the Port Marine Safety Unit Pittsburgh.

[FR Doc. 2018–17856 Filed 8–17–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2018–0750]

RIN 1625–AA00

Safety Zone; Allegheny River Miles 0.7 to 1.0, Pittsburgh, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all navigable waters of the Allegheny River, extending the entire width of the river, from mile marker (MM) 0.7 to MM 1.0. This safety zone is necessary to protect persons, vessels, and the marine environment from potential hazards associated with a fireworks display. Entry of persons or vessels into this zone is prohibited unless authorized by the Captain of the Port Marine Safety Unit Pittsburgh or a designated representative.

DATES: This rule is effective from 7:30 p.m. through 9 p.m. on September 11, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2018–0750 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Jennifer Haggins, Marine Safety Unit Pittsburgh, U.S. Coast Guard; telephone 412–221–0807, email *Jennifer.L.Haggins@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(3)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. This safety zone must be established by September 11, 2018, and we lack sufficient time to provide a reasonable comment period and then consider those comments before issuing this rule. The NPRM process would delay the establishment of the safety zone until after the date of the fireworks display and compromise public safety.

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

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Marine Safety Unit Pittsburgh (COTP) has determined that potential hazards associated with this barge-launched fireworks display will be a safety hazard for anyone within a less than one half-mile stretch of the Allegheny River. The rule is necessary to protect persons, vessels, and the marine environment on the navigable waters within the safety zone before, during, and after the fireworks.

IV. Discussion of the Rule

This rule establishes a safety zone from 7:30 p.m. through 9 p.m. on September 11, 2018. The safety zone will cover all navigable waters of the Allegheny River, extending the entire width of the river, from mile marker (MM) 0.7 to MM 1.0. The duration of the zone is intended to protect persons, vessels, and the marine environment on these navigable waters before, during, and after a fireworks display. No vessel or person is permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Marine Safety Unit Pittsburgh. Persons and vessels seeking entry into this safety zone must request permission from the COTP or a designated representative. They may be contacted on VHF–FM Channel 16 or by telephone at (412) 221–0807. Persons and vessels permitted to enter this safety zone must transit at their slowest safe speed and comply with all lawful instructions of the COTP or a designated representative. The COTP or a designated representative will inform the public of the enforcement period for the safety zone as well as any changes in the schedule through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs), as appropriate.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 13563 (''Improving Regulation and Regulatory Review'') and 12866 (''Regulatory Planning and Review'') direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (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. Executive Order 13771 (''Reducing Regulation and Controlling Regulatory Costs'') directs agencies to reduce regulation and control regulatory costs and provides that ''for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.''

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

This regulatory action determination is based on the size, time, duration, and location of the safety zone. This safety zone encompasses less than one half mile stretch of the Allegheny River for only one hour and thirty minutes on one evening. Moreover, the Coast Guard will issue BNMs via VHF–FM marine channel 16 about the zone, and the rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting only one hour and thirty minutes on one evening that will prohibit entry on less than one half mile stretch of the Allegheny River near a barge-launched fireworks display. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T08–0750 to read as follows:

§ 165.T08–0750 Safety Zone; Allegheny River Miles 0.7 to 1.0, Pittsburgh, PA.

(a) *Location.* The following area is a safety zone: All navigable waters of the Allegheny River, extending the entire width of the river, from mile marker (MM) 0.7 to MM 1.0.

(b) *Effective period.* This section is effective from 7:30 p.m. through 9 p.m. on September 11, 2018.

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

(2) Persons and vessels seeking entry into this safety zone must request permission from the COTP or a designated representative. They may be contacted on VHF–FM Channel 16 or by telephone at (412) 221–0807.

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

(d) *Informational broadcasts.* The COTP or a designated representative will inform the public of the enforcement period for the safety zone as well as any changes in the schedule through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate.

Dated: August 14, 2018.

A.W. Demo,

Commander, U.S. Coast Guard, Captain of the Port Marine Safety Unit Pittsburgh.

[FR Doc. 2018–17855 Filed 8–17–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2018–0743]

RIN 1625–AA00

Safety Zone; Ohio River Miles 0.0 to 0.5, Pittsburgh, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all navigable waters of the Ohio River, extending the entire width of the river, from mile marker (MM) 0.0 to MM 0.5. This safety zone is necessary to protect persons, vessels, and the marine environment from potential hazards associated with a fireworks display. Entry of persons or vessels into this

zone is prohibited unless authorized by the Captain of the Port Marine Safety Unit Pittsburgh or a designated representative.

DATES: This rule is effective from 8:30 p.m. through 10 p.m. on August 23, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2018–0743 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Jennifer Haggins, Marine Safety Unit Pittsburgh, U.S. Coast Guard; telephone 412–221–0807, email *Jennifer.L.Haggins@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(3)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. This safety zone must be established by August 23, 2018, and we lack sufficient time to provide a reasonable comment period and then consider those comments before issuing this rule. The NPRM process would delay the establishment of the safety zone until after the date of the fireworks display and compromise public safety.

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

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Marine Safety Unit Pittsburgh (COTP) has determined that potential hazards associated with this land-based fireworks display will be a safety hazard for anyone on the adjacent waterway within a half-mile stretch of the Ohio River. The rule is necessary to protect persons, vessels, and the marine environment on the navigable waters within the safety zone before, during, and after the fireworks.

IV. Discussion of the Rule

This rule establishes a temporary safety zone from 8:30 p.m. through 10 p.m. on August 23, 2018. The safety zone will cover all navigable waters of the Ohio River, extending the entire width of the river, from mile marker (MM) 0.0 to MM 0.5. The duration of the zone is intended to protect persons, vessels, and the marine environment in these navigable waters before, during, and after a fireworks display. No vessel or person is permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Marine Safety Unit Pittsburgh. Persons and vessels seeking entry into this safety zone must request permission from the COTP or a designated representative. They may be contacted on VHF–FM Channel 16 or by telephone at (412) 221–0807. Persons and vessels permitted to enter this safety zone must transit at their slowest safe speed and comply with all lawful instructions of the COTP or a designated representative. The COTP or a designated representative will inform the public of the enforcement period for the safety zone as well as any changes in the schedule through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Broadcasts (MSIBs) as appropriate.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 13563 (''Improving Regulation and Regulatory Review'') and 12866 (''Regulatory Planning and Review'') direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (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. Executive Order 13771 (''Reducing Regulation and Controlling Regulatory Costs'') directs agencies to reduce regulation and control regulatory costs and provides that ''for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.''

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

This regulatory action determination is based on the size, time, duration, and location of the safety zone. This safety zone encompasses a half-mile stretch of the Ohio River for only one hour and thirty minutes. Moreover, the Coast Guard will issue a BNMs via VHF–FM marine channel 16 about the zone, and the rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting only one hour and thirty minutes that will prohibit entry on a half-mile stretch of the Ohio River near a land-based fireworks launching site. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T08–0743 to read as follows:

§ 165.T08–0743 Safety Zone; Ohio River Miles 0.0 to 0.5, Pittsburgh, PA.

(a) *Location.* The following area is a safety zone: All navigable waters of the Ohio River, extending the entire width of the river, from mile marker (MM) 0.0 to MM 0.5, Pittsburgh, PA.

(b) *Effective period.* This section is effective from 8:30 p.m. through 10 p.m. on August 23, 2018.

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

(2) Persons and vessels seeking entry into this safety zone must request permission from the COTP or a designated representative. They may be contacted on VHF–FM Channel 16 or by telephone at (412) 221–0807.

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

(d) *Informational broadcasts.* The COTP or a designated representative will inform the public of the enforcement period for the safety zone as well as any changes in the schedule through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs), as appropriate.

Dated: August 13, 2018.

A.W. Demo,

Commander, U.S. Coast Guard, Captain of the Port Marine Safety Unit Pittsburgh.

[FR Doc. 2018–17854 Filed 8–17–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2018–0716]

Recurring Safety Zone; Wheeling Annual Dragon Boat Race, Wheeling, WV

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the safety zone for the Wheeling Annual Dragon Boat Race to provide for the safety of persons, vessels, and the marine environment on the navigable waters of the Ohio River during this event. Our regulation for marine events within the Eighth Coast Guard District identifies the regulated area for this event in Wheeling, WV. During the enforcement periods, entry into this zone is prohibited unless authorized by the Captain of the Port Marine Safety Unit Pittsburgh or a designated representative.

DATES: The regulations in 33 CFR 165.801, Table 1, Line 88 will be enforced from 8 a.m. through 3 p.m. August 25, 2018.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email Petty Officer Jennifer Haggins, Marine Safety Unit Pittsburgh, U.S. Coast Guard; telephone 412–221–0807, email *Jennifer.L.Haggins@uscg.mil*.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce a safety zone for the Wheeling Annual Dragon Boat Race in 33 CFR 165.801, Table 1, Line 88 from 8 a.m. through 3 p.m. on August 25, 2018. This action is being taken to provide for the safety of persons, vessels, and the marine environment on the navigable waters of the Ohio River during this event. Our regulation for marine events within the Eighth Coast Guard District, § 165.801 specifies the location of the regulated area for the Wheeling Annual Dragon Boat Race. Entry into the regulated area is prohibited unless authorized by the Captain of the Port Marine Safety Unit Pittsburgh (COTP) or a designated representative. Persons or vessels desiring to enter into or pass through the regulated area must request permission from the COTP or a designated representative. They can be reached on VHF FM channel 16. If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative.

In addition to this notice of enforcement in the **Federal Register**, the COTP or a designated representative will inform the public through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), Marine Safety Information Bulletins (MSIBs), and/or through other means of public notice as appropriate at least 24 hours in advance of each enforcement.

Dated: August 10, 2018.

F.M. Smith,

Lieutenant Commander, U.S. Coast Guard, Acting Captain of the Port Marine Safety Unit Pittsburgh.

[FR Doc. 2018–17851 Filed 8–17–18; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2018–0060; FRL–9982–46—Region 10]

Air Plan Approval; Washington; Interstate Transport Requirements for the 2012 $PM_{2.5}$ NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Clean Air Act requires each State Implementation Plan (SIP) to contain adequate provisions prohibiting emissions that will have certain adverse air quality effects in other states. On February 7, 2018, the State of Washington made a submission to the Environmental Protection Agency (EPA) to address these requirements. The EPA is approving the submission as meeting the requirement that each SIP contain adequate provisions to prohibit emissions that will contribute significantly to nonattainment or interfere with maintenance of the 2012 annual fine particulate matter ($PM_{2.5}$) national ambient air quality standard (NAAQS) in any other state.

DATES: This final rule is effective September 19, 2018.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R10–OAR–2018–0060. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and is publicly available only in hard copy form. Publicly available docket materials are available at *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Jeff Hunt at (206) 553–0256, or *hunt.jeff@epa.gov.*

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

I. Background Information

On June 28, 2018, the EPA proposed to approve Washington as meeting the requirement that each SIP contain adequate provisions to prohibit emissions that will contribute significantly to nonattainment or interfere with maintenance of the 2012 $PM_{2.5}$ NAAQS in any other state (83 FR 30380). An explanation of the Clean Air Act requirements, a detailed analysis of the submittal, and the EPA's reasons for proposing approval were provided in the notice of proposed rulemaking, and will not be restated here. The public comment period for the proposal ended July 30, 2018.

II. Response to Comments

We received three comments on the rulemaking. After reviewing the comments, we have determined that the comments are outside the scope of our proposed action and fail to identify any material issue necessitating a response. For more information, please see our memorandum included in the docket for this action.

III. Final Action

The EPA is approving Washington's February 7, 2018, submission certifying that the SIP is sufficient to meet the interstate transport requirements of Clean Air Act section 110(a)(2)(D)(i)(I), specifically prongs one and two, as set forth in the proposed rulemaking for this action.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting federal requirements and does

not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 19, 2018. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

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

Dated: August 7, 2018.

Chris Hladick,

Regional Administrator, Region 10.

For the reasons set forth in the preamble, 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart WW—Washington

■ 2. In § 52.2470, table 2 in paragraph (e) is amended by adding the entry ''Interstate Transport for the 2012 $PM_{2.5}$ NAAQS'' immediately below the entry ''Interstate Transport for the 2008 Ozone NAAQS'' to read as follows:

§ 52.2470 Identification of plan.

* * * * *

(e) * * *

TABLE 2—ATTAINMENT, MAINTENANCE, AND OTHER PLANS

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanations
*	*	*	*	*
110(a)(2) Infrastructure and Interstate Transport				
*	*	*	*	*
Interstate Transport for the 2012 $PM_{2.5}$ NAAQS.	Statewide	2/7/2018	8/20/2018, [insert **Federal Register** citation].	This action addresses CAA 110(a)(2)(D)(i)(I).
*	*	*	*	*

[FR Doc. 2018–17823 Filed 8–17–18; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2018–0214, FRL–9982–59—Region 10]

Air Plan Approval; ID, Incorporations by Reference Updates and Rule Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve revisions to Idaho's State Implementation Plan (SIP) submitted by the Idaho Department of Environmental Quality (IDEQ) on March 20, 2018 and April 12, 2018. The submitted revisions update incorporation by reference of Federal regulations in the Idaho's rules. The revisions also remove an interim regulation that expired in 2003.

DATES: This final rule is effective September 19, 2018.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R10–OAR–2018–0214, at *http://www.regulations.gov.* All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Randall Ruddick at (206) 553–1999, or *ruddick.randall@epa.gov.*

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

Table of Contents

I. Background
II. Final Action
III. Incorporation by Reference
IV. Statutory and Executive Orders Review

I. Background

On March 20, 2018, the Idaho Department of Environmental Quality (IDEQ) submitted revisions to the SIP provisions that incorporate by reference (IBR) various portions of Federal regulations codified in the Code of Federal Regulations (CFR) into the Rules for the Control of Air Pollution in Idaho (IDAPA 58.01.01). Additionally, on April 12, 2018, Idaho submitted a separate SIP revision to remove an expired interim transportation conformity provision.

On June 29, 2018, EPA proposed to approve Idaho's March 20, 2018, and April 12, 2018, SIP submissions. Please see the proposed approval for further explanation (83 FR 30626). The public comment period for our proposed action ended July 30, 2018. We received three electronic comments submitted through *https://www.regulations.gov.* We reviewed the comments and have determined that they are not clearly related to the subject of this action and thus are not adverse to this action. Therefore, we are finalizing our action as proposed.

II. Final Action

EPA is approving, and incorporating by reference where appropriate, in Idaho's SIP, all revisions to IDAPA 58.01.01.107 *Incorporations by Reference* (state effective March 28, 2018), except .03.f through .p, as requested by Idaho on March 20, 2018. EPA is also approving, as requested by Idaho on April 12, 2018, removal of IDAPA 58.01.01.582 *Interim Conformity Provisions for Northern Ada County Former Nonattainment Area for PM 10* from the Idaho SIP. We have determined that the submitted SIP revisions are consistent with section 110 and parts C and part D of Title I of the CAA.

III. Incorporation by Reference

In this rule, EPA is approving regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is incorporating by reference the provisions described above in Section II. Final Action and set forth below, as amendments to 40 CFR part 52.

Also in this rule, EPA is removing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is removing the incorporation by reference of IDAPA 58.01.01.582 as described in Section II. Final Action and set forth below, as amendments to 40 CFR part 52.

EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and at the EPA Region 10 office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Statutory and Executive Orders Review

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

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

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

List of Subjects in 40 CFR Part 52

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

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

Dated: August 7, 2018.

Chris Hladick,

Regional Administrator, Region 10.

For the reasons set forth in the preamble, 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart N—Idaho

■ 2. In § 52.670, the table in paragraph (c) is amended by:

■ a. Revising entry 107; and

■ b. Removing entry 582.

The revision reads as follows:

§ 52.670 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED IDAHO REGULATIONS AND STATUTES

State citation	Title/subject	State effective date	EPA approval date	Explanations
Idaho Administrative Procedures Act (IDAPA) 58.01.01—Rules for the Control of Air Pollution in Idaho				
*	*	*	*	*
107	Incorporation by Reference	3/28/2018, 3/25/2016, 3/20/2014, 3/30/2007, 7/1/1997, 5/1/1994.	8/20/2018 [Insert **Federal Register** citation].	Except Section 107.03.f through 107.03.p.
*	*	*	*	*

* * * * *

[FR Doc. 2018–17825 Filed 8–17–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–R04–OAR–2017–0390; FRL–9982–70—Region 4]

Air Plan Approval and Air Quality Designation; KY; Redesignation of the Kentucky Portion of the Louisville Unclassifiable Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On May 4, 2018, the Commonwealth of Kentucky, through the Kentucky Energy and Environment Cabinet, Division for Air Quality (KDAQ), submitted a request for the Environmental Protection Agency (EPA) to redesignate the portion of Kentucky that is within the bi-state Louisville, KY-IN fine particulate matter ($PM_{2.5}$) unclassifiable area (hereinafter referred to as the ''bi-state Louisville Area'' or ''Area'') to unclassifiable/attainment for the 2012 primary annual $PM_{2.5}$ national ambient air quality standard (NAAQS). The bi-state Louisville Area consists of Jefferson County and a portion of Bullitt County in Kentucky, as well as Clark and Floyd Counties in Indiana. EPA is approving the State's request and redesignating the Area to unclassifiable/attainment for the 2012 primary annual $PM_{2.5}$ NAAQS based upon valid, quality-assured, and certified ambient air monitoring data showing that the $PM_{2.5}$ monitors in the bi-state Louisville Area are in compliance with the 2012 primary annual $PM_{2.5}$ NAAQS.

DATES: This rule will be effective September 19, 2018.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2017–0390. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information may not be publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Madolyn Sanchez, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Ms. Sanchez can be reached by telephone at (404) 562–9644 or via electronic mail at *sanchez.madolyn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On December 14, 2012, EPA revised the primary annual NAAQS for $PM_{2.5}$ at a level of 12 micrograms per cubic meter ($\mu g/m^3$), based on a 3-year average of annual mean $PM_{2.5}$ concentrations. *See* 78 FR 3085 (January 15, 2013). EPA established the standards based on significant evidence and numerous health studies demonstrating that serious health effects are associated with exposures to particulate matter.

The process for designating areas following promulgation of a new or revised NAAQS is contained in section

107(d)(1) of the CAA. On December 18, 2014, EPA designated the majority of areas across the country as nonattainment, unclassifiable/attainment, or unclassifiable[1] for the 2012 $PM_{2.5}$ NAAQS based upon air quality monitoring data from monitors for calendar years 2011–2013. *See* 80 FR 2206 (January 15, 2015). EPA's January 15, 2015, rulemaking notice also described a process by which EPA would evaluate any complete, quality-assured, certified air quality monitoring data from 2014 that a state submitted for consideration before February 27, 2015. EPA stated that it would evaluate whether, with the inclusion of certified 2014 data, the 3-year design value for 2012–2014 suggests that a change in the initial designation would be appropriate for an area. If EPA agreed that a change in the initial designation would be appropriate, EPA would withdraw the designation announced in the January 15, 2015, notice for such area before the effective date and issue another designation reflecting the inclusion of 2014 data.

In a follow-up designation action published on April 7, 2015 (80 FR 18535), EPA designated five areas as unclassifiable/attainment in Georgia, including two neighboring counties in the bordering states of Alabama and South Carolina, that were initially deferred in EPA's January 15, 2015, rulemaking. In the same action, EPA changed the designations for one area in Ohio, two areas in Pennsylvania, and one bi-state area with portions in Kentucky and Ohio from nonattainment to unclassifiable/attainment. The bi-state Louisville Area was changed from nonattainment to unclassifiable.

On May 4, 2018, Kentucky submitted a request for EPA to redesignate the bi-state Louisville Area to unclassifiable/attainment for the 2012 primary annual $PM_{2.5}$ NAAQS now that there is sufficient data to determine that the Area is in attainment. In a notice of proposed rulemaking (NPRM) published on May 30, 2018 (83 FR 24714), EPA proposed to approve the State's request to redesignate the Kentucky portion of the bi-state Louisville Area to unclassifiable/attainment for the 2012 primary annual $PM_{2.5}$ NAAQS. The details of Kentucky's submittal and the rationale for EPA's actions are further explained in the NPRM. EPA did not receive any adverse comments on the proposed action.

[1] For the initial PM area designations in 2014 (for the 2012 annual $PM_{2.5}$ NAAQS), EPA used a designation category of ''unclassifiable/attainment'' for areas that had monitors showing attainment of the standard and were not contributing to nearby violations and for areas that did not have monitors but for which EPA had reason to believe were likely attaining the standard and not contributing to nearby violations. EPA used the category ''unclassifiable'' for areas in which EPA could not determine, based upon available information, whether or not the NAAQS was being met and/or EPA had not determined the area to be contributing to nearby violations. EPA reserves the ''attainment'' category for when EPA redesignates a nonattainment area that has attained the relevant NAAQS and has an approved maintenance plan.

II. Final Action

EPA is approving Kentucky's redesignation request and redesignating the Kentucky portion of the bi-state Louisville Area from unclassifiable to unclassifiable/attainment for the 2012 primary annual $PM_{2.5}$ NAAQS.

III. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to unclassifiable/attainment is an action that affects the status of a geographical area and does not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to unclassifiable/attainment does not in and of itself create any new requirements. Accordingly, this action merely redesignates an area to unclassifiable/attainment and does not impose additional requirements. For that reason, this action:

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 19, 2018. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: August 8, 2018.

Onis ''Trey'' Glenn, III

Regional Administrator, Region 4.

40 CFR part 81 is amended as follows:

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 1. The authority citation for part 81 continues to read as follows:

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

■ 2. In § 81.318, the table entitled ''Kentucky-2012 Annual $PM_{2.5}$ NAAQS'' is amended under the heading ''Louisville, KY-IN:'' by revising the entries for ''Bullitt County (part)'' and ''Jefferson County'' to read as follows:

§ 81.318 Kentucky.

* * * * *

KENTUCKY—2012 ANNUAL $PM_{2.5}$ NAAQS

[Primary]

Designated area [1]	Designation		Classification	
	Date [2]	Type	Date [2]	Type
Louisville, KY-IN:				
Bullitt County (part)	August 20, 2018	Unclassifiable/Attainment.		
2010 Census tracts: 201.01, 201.02, 201.03, 202.01, 202.02, 203, 204, 205, 206.01, 206.02, 207.01, 207.02, 208, 211.01 and 211.02.				
Jefferson County	August 20, 2018	Unclassifiable/Attainment.		
* * *	*	*	*	*

[1] Includes areas of Indian country located in each county or area, except as otherwise specified.
[2] This date is April 15, 2015, unless otherwise noted.

* * * * *

[FR Doc. 2018–17935 Filed 8–17–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R03–RCRA–2017–0553; FRL–9982–19—Region 3]

District of Columbia: Final Authorization of District Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final authorization.

SUMMARY: The EPA is granting the District of Columbia (the District) final authorization for revisions to its hazardous waste management program under the Resource Conservation and Recovery Act (RCRA). The Agency published a proposed rule on June 11, 2018 and provided for public comment. No comments relevant to the proposed revisions were received. No further opportunity for comment will be provided.

DATES: This final authorization is effective on August 20, 2018.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R03–RCRA–2017–0553. All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some of the information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy. You may view and copy the District's application from 9:00 a.m. to 5:00 p.m., Monday through Friday at the following locations: District of Columbia Department of Energy and Environment, Environmental Services Administration, Hazardous Waste Branch, 1200 First Street NE, 5th Floor, Washington, DC, Phone number: (202) 654–6031, Attn: Barbara Williams; and EPA Region III, Library, 2nd Floor, 1650 Arch Street, Philadelphia, PA 19103–2029, Phone number: (215) 814–5254.

FOR FURTHER INFORMATION CONTACT: Sara Kinslow, U.S. EPA Region III, RCRA Waste Branch, Mailcode 3LC32, 1650 Arch Street, Philadelphia, PA 19103–2029, phone number: (215) 814–5577, email: *kinslow.sara@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. What revisions is EPA authorizing with this action?

On August 15, 2012, the District submitted a final complete program revision application (with subsequent corrections) seeking authorization of revisions to its hazardous waste management program in accordance with 40 CFR 271.21. EPA now makes a final decision that the District's hazardous waste management program revisions are equivalent to, consistent with, and no less stringent than the Federal program, and therefore satisfy all of the requirements necessary to qualify for final authorization. For a list of District rules that are being authorized with this final authorization please see the proposed rule published in the June 11, 2018 **Federal Register** at 83 FR 26917.

B. What is codification and is EPA codifying the District of Columbia's hazardous waste program as authorized in this authorization?

Codification is the process of placing a state's statutes and regulations that comprise that state's authorized hazardous waste program into the Code of Federal Regulations. EPA does this by referencing the authorized state rules in 40 CFR part 272. EPA is not codifying the authorization of the District's revisions at this time. However, EPA reserves the amendment of 40 CFR part 272, subpart J, for codification of this authorization of the District's hazardous waste management program until a later date.

C. Statutory and Executive Order Reviews

This final authorization revises the District's authorized hazardous waste management program pursuant to section 3006 of RCRA and imposes no requirements other than those currently imposed by District law. For further information on how this authorization complies with applicable executive orders and statutory provisions, please see the proposed rule published in the June 11, 2018 **Federal Register** at 83 FR 26917.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians—lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: July 31, 2018.

Cosmo Servidio,

Regional Administrator, U.S. EPA Region III.

[FR Doc. 2018–17921 Filed 8–17–18; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 405, 424, 455, and 498

[CMS–6073–N2]

Medicare, Medicaid, and Children's Health Insurance Programs: Announcement of Revisions to the Provider Enrollment Moratoria Access Waiver Demonstration for Part B Non-Emergency Ground Ambulance Suppliers and Home Health Agencies in Moratoria-Designated Geographic Locations

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Revisions of the waiver demonstration.

SUMMARY: This document announces revisions to the Provider Enrollment Moratoria Access Waiver Demonstration (PEWD) for Part B Non-Emergency Ground Ambulance Suppliers and Home Health Agencies. The demonstration was implemented in accordance with section 402(a)(1)(J) of the Social Security Amendments of 1967 and, as revised, gives CMS the authority to grant waivers to the statewide enrollment moratoria on a case-by-case basis in response to access to care issues and previously denied enrollment applications because of statewide moratoria implementation, and to subject providers and suppliers enrolling via such waivers to heightened screening, oversight, and investigations.

DATES: The revisions to the waiver demonstration are effective August 20, 2018.

FOR FURTHER INFORMATION CONTACT: Jung Kim, (410) 786–9370. News media representatives must contact CMS' Public Affairs Office at (202) 690–6145 or email them at *press@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Social Security Act (the Act) provides CMS with tools and resources to combat fraud, waste, and abuse in Medicare, Medicaid, and the Children's Health Insurance Program (CHIP), including the authority to place a temporary moratorium on provider enrollment in these programs, 402(a)(1)(J) of the Social Security Amendments of 1967 (42 U.S.C. 1395b–1(a)(1)(J)). CMS uses quantitative and qualitative data to determine whether there is a need for a moratorium, such as reviewing whether the area under consideration for a moratorium has significantly higher than average billing per beneficiary or provider per beneficiary ratios. CMS first used its moratoria authority on July 30, 2013, to prevent enrollment of new Home Health Agencies (HHAs) in the Chicago, Illinois and Miami, Florida areas, as well as Part B ground ambulance suppliers in the Houston, Texas area (see the July 31, 2013 **Federal Register** (78 FR 46339)). These moratoria also applied to Medicaid and CHIP. CMS exercised this authority again on January 30, 2014, to extend the existing moratoria for 6 months and expand them to include HHAs in Fort Lauderdale, Florida; Detroit, Michigan; Houston, Texas; and Dallas, Texas; as well as Medicaid, CHIP and Medicare Part B ground ambulance suppliers in Philadelphia, Pennsylvania and nearby New Jersey counties (see the February 4, 2014 **Federal Register** (79 FR 6475)). Since the moratoria were expanded, they remained in place and were extended in 6-month intervals. On July 29, 2016, CMS extended the existing moratoria for 6 months and expanded them to statewide in the impacted states (see the August 3, 2016 **Federal Register** (81 FR 51120)). The statewide moratoria have since been extended at 6-month intervals and to date, largely remain in place in all of the previously-mentioned locations.[1]

Since initial implementation of the moratoria, CMS has monitored the program and identified several operational challenges. Because the moratoria were initially geographically defined by county, the moratoria did not prohibit existing providers and suppliers from opening a branch location in, or moving a currently-enrolled business into, a moratoria area. Moreover, CMS was unable to prevent existing providers and suppliers enrolled outside of a moratoria area from servicing beneficiaries within the moratoria area. In fact, CMS discovered providers and suppliers who were located several hundred miles outside of a moratorium area that were billing for services furnished to beneficiaries located within the moratorium area.

As noted previously, on July 29, 2016, CMS implemented statewide moratoria on newly enrolling HHAs in Medicare, Medicaid, and CHIP, and non-emergency ground ambulance suppliers in Medicare Part B, Medicaid, and CHIP in order to mitigate the vulnerabilities identified and described previously regarding the prior county-based moratoria. Concurrently, CMS implemented this Demonstration in order to improve methods for the investigation and prosecution of fraud, and to ensure that program integrity enforcement actions did not impact beneficiary access to care; in particular, all of the states impacted by the expanded statewide moratoria have rural areas that could be impacted by the statewide expansion. By implementing this Demonstration, CMS created a process that allows for need-based waivers to the moratoria in areas with access to care issues. Recently, CMS re-evaluated the continued need for statewide moratoria on the enrollment of new Part B, Medicaid, and CHIP non-emergency ground ambulance suppliers in New Jersey and Pennsylvania, and HHAs in Florida, Illinois, Michigan, and Texas, and determined that the conditions that caused CMS to implement the moratoria have not abated. As a result, on July 29, 2018 (see the August 2, 2018 **Federal Register** (83 FR 37747), we extended the statewide moratoria on Part B, Medicaid, and CHIP non-emergency ground ambulance suppliers and HHAs in the impacted states.

A. Operational Challenges

Since expanding statewide, a new statutory provision affecting the moratoria areas has taken effect. In December 2016, Congress enacted the 21st Century Cures Act (Cures Act). Section 17004 of the Cures Act provides authority to address issues of circumvention of the prior county-based moratoria by prohibiting payment for items or services furnished within moratoria areas by any newly enrolled provider or supplier that is of a provider

[1] Effective July 29, 2016, CMS lifted the moratoria on Part B emergency ground ambulance suppliers in all locations. (81 FR 51120) In addition, effective September 1, 2017, CMS lifted the moratoria on Part B non-emergency ground ambulance suppliers in Texas. (82 FR 51274) These actions also applied to Medicaid and CHIP.

or supplier type subject to the moratoria.

We believe it is necessary to maintain statewide moratoria and this Demonstration in Medicare, Medicaid, and CHIP in order to more effectively rectify the circumvention issue. As such, we must address a challenge we identified with carrying out the statewide moratoria and the existing Demonstration in light of the Cures Act requirement. The Demonstration provides an opportunity for providers and suppliers otherwise subject to the moratoria to enroll and furnish services within a moratorium area if CMS determines that there are access to care issues in a particular geographic area. However, the Cures Act provision prevents payments to newly enrolled providers and suppliers subject to the moratoria for items and services furnished in moratoria areas. This includes those providers and suppliers enrolled under the Demonstration. This Cures Act provision became effective for such items and services furnished on or after October 1, 2017. To continue to avoid potential patient access to care issues and to continue a process to test whether allowing for targeted anti-fraud activities through heightened screening of providers and suppliers enrolling through the Demonstration will improve methods for the investigation and prosecution of fraud under section 402(a)(l)(J) of the Social Security Amendments of 1967, CMS is revising the Demonstration to waive the requirements of section 17004 of the Cures Act for the providers and suppliers enrolled under the Demonstration.[2] With this revision, providers and suppliers enrolled under the Demonstration will be able to receive Medicare, Medicaid, and/or CHIP payment for items and services furnished within the provider's or supplier's approved service area for the Demonstration.

B. Expanded Access to the Demonstration

The regulation at 42 CFR 424.570(a)(1)(iv) provides that a temporary enrollment moratorium does not apply to any enrollment application that has been approved by the Medicare Administrative Contractor (MAC) but not yet entered into PECOS at the time the moratorium is imposed. During the time period when the moratoria was county-based, some providers and suppliers spent a substantial amount of time and considerable resources preparing for enrollment in states subject to the prior county-based moratoria only to have their Form CMS–855 applications denied near the end of the enrollment process because of the sudden imposition of a statewide moratorium. This has been especially problematic for HHAs—(1) whose Form CMS–855A applications had been recommended for approval by the MAC; (2) that had successfully completed a state survey; and (3) whose applications and survey results had been forwarded by the state to the CMS regional office for final review.

As a result, CMS is further revising the Demonstration to include two different options for eligibility: (1) The existing option requiring that the provider or supplier demonstrate that access to care issues exist; or (2) the new alternative option requiring that the provider or supplier establish that it had submitted an enrollment application prior to implementation of the moratorium that was denied as a result of implementation of such moratorium. This alternative requirement applies to the July 29, 2016 statewide moratoria and any moratoria that are implemented subsequent to, and for the duration of, this demonstration. Thus this revision will allow CMS to approve individual waivers to a statewide moratorium due to providers or suppliers demonstrating that access to care issues exist, or for providers and suppliers that had submitted an enrollment application prior to implementation of a moratorium on July 29, 2016, or later, that was denied by their relevant MAC as a result of implementation of such moratoria. Providers and suppliers who meet either of these criteria will be subject to the heightened screening, oversight, and restrictions of the revised Demonstration. These two options for eligibility will allow additional opportunities for providers and suppliers to enroll under the revised Demonstration. This will better allow CMS to test whether conducting targeted anti-fraud activities through heightened screening of enrolling providers or suppliers, in conjunction with increased oversight and other restrictions, will improve methods for the investigation and prosecution of fraud under Section 402(a)(l)(J) of the Social Security Amendments of 1967. As such, for purposes of this Demonstration, CMS is waiving the regulatory requirement in 42 CFR 424.570(a)(1)(iv), described previously.[3]

C. Enrollment Effective Date Flexibilities

Regardless of the reason a provider or supplier qualifies for the Demonstration, CMS is also revising the Demonstration to provide additional discretion regarding the effective date of new billing privileges in order to better address any access to care concerns that do arise. CMS is waiving the regulatory requirement in 42 CFR 424.520(a) and (d) governing the effective date of new billing privileges for certified providers and ambulance suppliers, respectively, so as to allow CMS to evaluate and assign effective dates depending on whether access to care issues exist in the service area.[4]

D. Summary

As described in greater detail in section II. of this document, because CMS sees a high incidence of fraud in the moratoria areas, extensive screening and review of providers and suppliers newly enrolling under the Demonstration will be coupled with an earlier review of claims and other investigations and prosecutions of fraud with respect to such providers and suppliers. The revised Demonstration will also support statewide moratoria by addressing the moratoria circumvention issues that surfaced throughout the prior county-based moratoria and providing waivers to the moratoria to ensure that beneficiary access to care is not adversely impacted. Approval of a waiver would be based primarily on either the provider or supplier demonstrating an access to care issue exists or that the provider or supplier submitted an enrollment application prior to implementation of a moratorium on July 29, 2016, or later that was denied as a result of implementation of such moratorium, and secondarily on passing the enhanced screening measures in the approved service area.

A finding of fraud risk in Medicare typically means that the risk also exists in Medicaid and CHIP, as recognized by section 1902(a)(39) of the Act, which requires state Medicaid agencies to terminate the participation of any individual or entity if such individual or entity is terminated under Medicare or any other state's Medicaid or CHIP program. Moreover, access to care issues are of equal concern in the context of Medicaid and CHIP. As a result, CMS

[2] The Secretary may waive compliance with the requirements of titles XVIII and XIX of the Social Security Act under section 402(b) of Public Law 90–248, (42 U.S.C. 1395b–1(b)).

[3] The Secretary may waive compliance with the requirements of titles XVIII and XIX of the Social Security Act under section 402(b) of Public Law 90–248 (42 U.S.C. 1395b–1(b)).

[4] The Secretary may waive compliance with the requirements of titles XVIII and XIX of the Social Security Act under section 402(b) of Public Law 90–248 (42 U.S.C. 1395b–1(b)).

will also implement the revised Demonstration in Medicaid and CHIP.

II. Demonstration Design and Duration

This revised Demonstration will continue to support the existing statewide moratoria on HHAs in Medicare, Medicaid, and CHIP, and non-emergency ground ambulance suppliers in Medicare Part B, Medicaid, and CHIP. This revised Demonstration will allow a provider or supplier to submit a Provider Enrollment Moratoria Access Waiver (waiver) application that, if approved, will exempt such provider or supplier from the moratorium in designated geographic areas. The waiver application for Medicare enrollment will be reviewed by CMS, and this review will include heightened screening measures. The waiver application for Medicaid and CHIP will be reviewed by the relevant State Medicaid Agency. If the provider or supplier receives a waiver, restrictions may be imposed on such provider's or supplier's service area to limit the number of new providers or suppliers in a location that is already oversaturated with particular providers and/or suppliers. This restriction will be based on the saturation of providers or suppliers and the number of beneficiaries in the counties where the provider or supplier proposes to operate. Extensive evaluations of providers and suppliers seeking to enroll through this demonstration will be coupled with proactive reviews of submitted claims on an ad hoc basis, beginning within the first 30 to 60 days of enrollment and continuing for the first year of enrollment, as well as increased investigations with referral to law enforcement as appropriate, for newly enrolled and existing providers.

A. Medicare Implementation

All waiver applications, with the appropriate CMS–855 [5] enrollment application form and supporting documentation, should be submitted electronically to a designated mailbox: *ProviderEnrollmentMoratoria@cms.hhs.gov.* Upon receipt of the applicable CMS–855 application, waiver application, all supporting documentation, and payment of the enrollment application fee, CMS will review for completeness and, within 30 days, will respond with confirmation of receipt or in the case of an incomplete application, rejection. As part of the Demonstration, CMS will review the applicant's affiliations to include: (1) A 5 percent or greater direct or indirect ownership interest that an individual or entity has in another organization; (2) a general or limited partnership interest that an individual or entity has in another organization; (3) an interest in which an individual or entity exercises operational or managerial control over or directly or indirectly conducts the day-to-day operations of another organization, either under contract or through some other arrangement, regardless of whether or not the managing individual or entity is a W–2 employee of the organization; (4) an interest in which an individual is acting as an officer or director of a corporation; (5) any reassignment relationship. In section 5 of the Waiver Application,[6] we require providers and suppliers to report affiliations with entities and individuals that: (1) Currently have uncollected debt to Medicare, Medicaid, or CHIP; (2) have been or are subject to a payment suspension under a federal health care program or subject to an Office of Inspector General (OIG) exclusion; or (3) have had their Medicare, Medicaid, or CHIP enrollment denied or revoked. Should such an affiliation be reported or discovered, CMS could deny the provider's or supplier's PEWD application if CMS determines that the affiliation poses an undue risk of fraud, waste, or abuse. As part of the review to determine undue risk, CMS will consider the duration of the applicant's relationship with the affiliated entity or individual, determine whether the affiliation still exists or how long ago it ended, the degree and extent of the affiliation, and reason for termination of the affiliation if applicable. CMS may also deny a provider's or supplier's PEWD application if CMS determines that the provider or supplier is currently revoked from Medicare, Medicaid, or CHIP under a different name, numerical identifier, or business identity. To minimize provider burden the ''look-back'' period for disclosure of affiliations will be within the previous 5 years. However, there will be no cut-off or specific ''look-back'' period for when the disclosable event occurred or was imposed.

Should CMS receive more than one application for a particular geographical area, and the acceptance factor is based on access to care, the applications will be prioritized by order of receipt until the access to care concern is alleviated. Should CMS receive more than one application for a particular geographical area, and the acceptance factor is that enrollment applications were denied because of implementation of moratoria, all applications will be prioritized and processed in the order of receipt. Should CMS receive applications for a particular geographical area from a provider or supplier seeking to demonstrate an access to care issue and from another provider or supplier whose enrollment application was denied as a result of implementation of moratoria, the application from the provider or supplier whose enrollment application was denied due to the implementation of moratoria will be prioritized. An application will not be considered received until it is complete, including fingerprinting. Subsequently, CMS will have 90 days from initial receipt to review each application and communicate a decision to the provider or supplier.

Once a complete application is received, the determining factor for waiver approval under this revised Demonstration, and the first step in application review, will either be (1) a determination regarding beneficiary access to care; or (2) verification that the provider or supplier had submitted an enrollment application prior to implementation of a moratorium on July 29, 2016, or later, that was denied as a result of implementation of such moratorium. With respect to providers and suppliers seeking a waiver based on access to care issues, the determination will be primarily based upon an evaluation of provider and supplier saturation, provider or supplier to beneficiary ratios, and claims data; this review will be supplemented with any access to care information that the provider or supplier has provided. As a requirement of the application, the provider or supplier will be required to submit detailed access to care information that demonstrates whether an access to care issue exists in the counties where the provider or supplier is attempting to enroll. In 2016, CMS released saturation data to the public. This data set, located at *https://data.cms.gov/market-saturation,* includes saturation data for the nation and identifies states that are impacted by moratoria. This data gives both states and the public detailed information relevant for access to care justification. Additionally, we are expecting anecdotal data from the applicants to support that an access to care issue exists, which should not subject applicants to the unnecessary burden of performing extensive analyses. CMS

[5] CMS 855 is the Medicare provider and supplier enrollment application and may be found at *https://www.cms.gov/Medicare/CMS-Forms/CMS-Forms/CMS-Forms-List.html.*

[6] The Waiver Application may be found at *https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/MedicareProviderSupEnroll/ProviderEnrollmentMoratorium.html.*

will evaluate the provider- or supplier-generated information and compare it with statistical analysis data that is generated internally by CMS to determine whether an access to care issue exists in the identified area.

If CMS determines that a beneficiary access to care issue does not exist in the counties where the provider or supplier proposes to operate, the application will be rejected and the application fee will be refunded. Upon rejection, the provider or supplier may submit a new application at any time. If any subsequent application demonstrates an access to care issue, then CMS may move forward with processing the application.

For those providers or suppliers seeking a waiver because their enrollment application was denied as a result of implementation of a moratorium, if CMS cannot verify the denial, the application will be rejected and the application fee will be refunded. Upon rejection, the provider or supplier may submit a new application at any time. If for any subsequent application CMS is able to verify that the provider or supplier had submitted an enrollment application prior to implementation of a moratorium that was denied as a result of such moratorium, then CMS may move forward with processing the application.

When CMS determines that there is a beneficiary access to care issue in the counties where the provider or supplier has proposed to enroll, or when CMS verifies that the provider or supplier had submitted an enrollment application prior to implementation of a moratorium that was denied as a result of implementation of such moratorium, CMS will move forward with processing the application. CMS will utilize the ownership information in the submitted CMS–855 application, in conjunction with the revised Demonstration, to perform numerous screening measures, which will include the following:

- License verification.
- Background investigations including evaluation of affiliations.
- Federal debt review.
- Credit history review.
- Fingerprint-based criminal background checks (FCBC) of persons with a 5 percent or greater direct or indirect ownership interest, partners, and managing employees.
- Enhanced site visits.
- Ownership interest verification.
- Evaluation of past behavior in other public programs.

Providers and suppliers who do not pass the heightened screening requirements will receive a letter stating that their application has been denied and indicating the specific reason(s) for denial. The provider or supplier may submit an appeal to CMS within 15 days of the date of denial. The appeal must specifically address the reason(s) for denial and detail the action(s) taken to resolve any deficiency. CMS will evaluate the appeal and process or deny the application as appropriate. If a provider's or supplier's application is denied, the application fee will not be refunded. Further, if a provider or supplier is denied for a reason under 42 CFR 424.530(a), the provider or supplier may not reapply for a waiver under the Demonstration.

Providers and suppliers who are recommended for enrollment under the Demonstration will be advised that their respective CMS–855 applications are being forwarded to the Medicare Administrative Contractor (MAC) for further processing. The MAC will process the application and determine whether enrollment is appropriate based on all current policies and procedures. All applicants who are enrolled through the Demonstration will be subject to all Medicare policies and regulations, including revalidation within 5 years of initial enrollment, in addition to the heightened oversight that is implemented through the Demonstration.

The Act includes requirements regarding provider enrollment and oversight for the Medicare and Medicaid Programs. Among other provisions, section 1866(j)(3)(A) of the Act allows for up to a 1-year provisional period of enhanced oversight of newly enrolled providers of services and suppliers, which may be implemented through program instruction. During this Demonstration, CMS will utilize this authority and may revoke a provider's or supplier's Medicare billing privileges if the enhanced oversight identifies grounds for such revocation.

As an enhanced oversight measure, providers or suppliers that are approved to enroll in the Demonstration because of a determination that access to care issues exist in the areas where they proposed to enroll will be given a specific need-based geographic area, by county, in which they are approved to operate. For those providers or suppliers who are approved on the basis of an access to care issue, should CMS find that the access to care limitation extends beyond the counties that were initially proposed by the provider or supplier, CMS may accordingly request that the provider or supplier expand the area of operation. Providers and suppliers that are approved to enroll in the Demonstration because they had submitted an enrollment application prior to implementation of a moratorium that was denied as a result of implementation of such moratorium will be allowed to service locations listed in the enrollment application that they submit with their waiver application. However, as discussed earlier in section II of this document, restrictions may be imposed on the service area of a provider or supplier approved to enroll in the Demonstration in order to limit the number of new providers or suppliers in a location that is already oversaturated with particular providers and/or suppliers. This will be applicable to providers or suppliers that are approved to enroll in the Demonstration because of a determination that access to care issues exist or because they had submitted an enrollment application prior to implementation of a moratorium that was denied as a result of implementation of such moratorium.

Providers or suppliers enrolling under the Demonstration may not bill beneficiaries for services furnished outside of the approved service area, and claims for services furnished outside of the approved service area will be denied. Additionally, in response to fraud trends, CMS may perform medical review of claims submitted, including an evaluation of any prior relationships between the provider or supplier and the beneficiary and whether the services were medically necessary. Other reviews may be performed if deemed necessary. CMS will continue the enhanced oversight throughout the revised Demonstration, billing patterns will be monitored through the Fraud Prevention System (FPS), and any abuse of billing privileges may result in revocation of Medicare billing privileges.

The combined goal of the statewide moratoria and the revised Demonstration outlined herein is to address beneficiary access to care issues, while targeting fraud, waste, and abuse. Success of this revised Demonstration is contingent upon an increase in oversight and enforcement in all six current moratoria states. This oversight will be provided using existing tools, as well as those created through this revised Demonstration, by both CMS and CMS' law enforcement partners. Under this revised Demonstration, CMS will share applicable data with law enforcement partners to aid in the investigation and prosecution of fraud.

Through quarterly data evaluations, CMS will continue to carefully monitor potential access to care issues that could develop in the moratoria states.

Additionally, CMS will respond to any access issue identified and brought to our attention outside of the quarterly review.

B. Increased Investigation and Prosecution

As a measure to enhance our oversight in these high risk areas, the revised waiver application process will include a more robust evaluation of the provider/supplier, including license verification, detailed background checks, fingerprinting, comprehensive site visits, ownership interest verification, and evaluation of past behavior in other public programs, such as Medicaid and CHIP, as applicable. The revised waiver application will also require the provider or supplier to submit a specific county-based enrollment justification based on access to care, the boundaries of which CMS would confirm and ultimately enforce, with the exception of providers and suppliers that had an enrollment application denied by their relevant MAC as a result of implementation of a moratorium. As detailed elsewhere in this document, once a provider or supplier is enrolled pursuant to a waiver, that provider or supplier would be subjected to augmented investigation and monitoring in order to confirm continued compliance with Medicare requirements.

Throughout the course of the Demonstration, CMS will work with all of its partners to identify fraudulent providers and suppliers and will take administrative action to remove such providers and suppliers from the Medicare program. Additionally, within 30 to 60 days of a provider's or supplier's enrollment pursuant to a waiver, CMS will perform proactive monitoring and oversight of such provider or supplier, including proactive examination of claims data and investigation of billing anomalies. Further, CMS will prioritize Demonstration-related investigations and will make referrals to appropriate law enforcement partners, including Department of Justice (DOJ), Office of Inspector General (OIG), and state law enforcement agencies, for prosecution of fraud.

C. Medicaid and CHIP Implementation

In addition to the Medicare program, this revised Demonstration will also apply to Medicaid and CHIP. The states will administer the Medicaid and CHIP Demonstration and will independently evaluate access to care. All Demonstration-related processes, including but not limited to heightened screening, enrollment, denials, and appeals, will be operationalized by the state Medicaid and CHIP agencies in accordance with federal and state regulations and guidance. The states will make recommendations to CMS regarding when a provider should be enrolled based on access to care issues, and must wait for CMS concurrence prior to enrolling a provider under the Demonstration. CMS will evaluate all recommendations within 30 days of receipt, and will advise the state as to whether or not CMS concurs with the recommendation to move forward in the enrollment process. CMS encourages states to use their discretion when determining whether to approve a waiver for any provider who had submitted an application prior to implementation of a moratorium that was denied as a result of implementation of such moratorium. States that choose to apply waivers in this manner should do so consistently for all providers who were denied as a result of the moratorium. States are not required to seek CMS approval of their waiver process. Additionally, states will not be required to seek approval from CMS to deny a waiver application. If a provider receives an enrollment waiver from Medicare, that provider will be eligible to enroll in Medicaid or CHIP without further review by the states. However, if a provider receives a Medicaid or CHIP waiver, the provider must separately apply for a waiver with Medicare.

As provided in 42 CFR 455.470, a state Medicaid agency is not required to impose a moratorium if the state Medicaid agency determines that imposition of a temporary moratorium would adversely affect beneficiaries' access to medical assistance and notifies the Secretary in writing of this determination.

D. Duration of the Demonstration

The Demonstration commenced on July 29, 2016 and was to continue for a period of 3 years, or until the moratoria are lifted, whichever occurs first. However, CMS is extending the Demonstration an additional 2 years, for a total of 5 years, through July 28, 2021. Since the commencement of the demonstration, CMS thus far has collected limited data on which to evaluate the effectiveness of the demonstration. We expect that the extension to 5 years will allow more providers and suppliers to enroll under the Demonstration, thus providing CMS with more data on which to evaluate the Demonstration's effectiveness. Should CMS choose to lift all of the moratoria prior to July 28, 2021, we will not continue the Demonstration.

E. Demonstration Conclusion

CMS will utilize the Demonstration as an opportunity to observe the statewide moratoria and heightened application review effectiveness over the course of 5 years, or until the moratoria are lifted, whichever occurs first. Should the Demonstration prove to be a useful tool, we hope to consider continuing and expanding the most successful aspects outside the context of a demonstration. The enhanced oversight exercised as part of the Demonstration will also allow us to identify trends and vulnerabilities in the moratoria states and make program adjustments to accommodate fraud schemes as they transform over time.

Concurrent with the Demonstration, CMS will continue to assess and improve current regulatory requirements for HHAs, ambulance suppliers, and other provider/supplier types that pose a high risk to the Medicare program. In the absence of additional rulemaking, any enrollments that occur as part of the Demonstration, assuming that the enrolled providers or suppliers are in compliance with all Medicare requirements, will convert to standard enrollments without geographical billing restrictions at the end of the Demonstration.

CMS recognizes that a moratorium is a temporary tool that we have implemented in order to conduct targeted investigations and related enforcement actions in high saturation, high risk areas. As required under our regulations, we will re-evaluate the continued need for the moratoria every 6 months and may lift the moratoria at any time if the Secretary determines that the moratoria are no longer needed, or the circumstances warranting the imposition of moratoria have abated or CMS has implemented program safeguards to address the program vulnerability, among other rationale.[7] We will monitor the moratoria areas to determine if it is appropriate to lift all moratoria (and thus end the Demonstration), including the following criteria:

- Beneficiary access to care.
- Provider or supplier growth rates.
- The number of providers or suppliers per beneficiary.
- Provider/supplier saturation.
- Churn rate—the rate of providers/suppliers entering and exiting the program.
- Claims paid per beneficiary.
- Enforcement actions, including: Revocations, denials, investigations, and referrals to law enforcement and other related activities.

[7] 42 CFR 424.570.

IV. Collection of Information Requirements

A. Background

Under the Paperwork Reduction Act of 1995 (PRA), we are required to publish a 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval.

To fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our burden estimates.
- The quality, utility, and clarity of the information to be collected.
- Our effort to minimize the information collection burden on the affected public, including the use of automated collection techniques.

We are soliciting public comment on each of the section 3506(c)(2)(A)-required issues for the following information collection requirements (ICRs). This is covered under OMB control number 0938–1313.

B. Burden Estimate (Hours and Wages)

1. Paperwork Burden Estimate (Hours)

The provider and supplier burden associated with completion of the waiver form is estimated at 6 hours per form. This will include the following time burden per form:

- 2 hours for completion of fingerprint-based criminal background check (FCBC).
- 2 hours for completion of access to care assessment.
- 1.5 hours for completion of form.
- 0.5 hours for completion of other miscellaneous administrative activities.

There will be variation to this estimate based on proximity to a fingerprinting office as well as the complexity of the data that the provider or supplier elects to submit. To assist with completion of the access to care assessment, CMS has HHA and ambulance saturation data available at *https://data.cms.gov/market-saturation.*

CMS estimates 30 new applicants requesting waivers for a total of 180 burden hours annually. Additionally, the provider or supplier will have the additional burden associated with completion of the CMS–855, which is required for enrollment into Medicare. This burden is covered under OMB control number 0938–0685.

2. Paperwork Burden Estimate (Costs)

This waiver form will be completed by providers and suppliers seeking a waiver to enroll in a moratorium area. The cost burden is estimated at $27.60 ($13.80 base pay) an hour for completion of access to care analysis and miscellaneous administrative activities, totaling $69.00 per application, equaling $2,070.00 annually. The cost burden is estimated at $188.50 ($94.25 base pay) an hour for the owner to obtain fingerprints and complete the waiver form totaling $659.75 per application, equaling $19,792.5 annually. Estimated annual burden for 30 newly enrolling applicants totals $21,862.5. To derive average costs, we used data from the Bureau of Labor Statistics' May 2017 National Occupational Employment and Wage Estimates (*http://www.bls.gov/oes/current/oes_nat.htm#31-0000* for healthcare support occupations and *http://www.bls.gov/oes/current/oes111011.htm* for chief executives.) Hourly wage rates include the costs of fringe benefits (calculated at 100 percent of salary) and the adjusted hourly wage.

C. Response to Comments

We have submitted a copy of the **Federal Register** document to OMB for its review of the document's information collection and recordkeeping requirements. These requirements are not effective until they have been approved by the OMB.

To obtain copies of the supporting statement and any related forms for the proposed collections discussed previously, please visit CMS' website at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/index.html,* or call the Reports Clearance Office at 410–786–1326.

We invite public comments on these potential information collection requirements. If you wish to comment, please submit your comments electronically as specified in the **ADDRESSES** section of this document and identify the document's filecode (CMS–6073–N2) the ICR's CFR citation, CMS ID number, and OMB control number.

V. Waiver Authority

Under section 402(b) of Public Law 90–248, (42 U.S.C. 1395b–1(b)), certain requirements of the Act and implementing regulations would be waived to the extent necessary to implement this demonstration.

Specifically, the authorities CMS is seeking to waive under this revised Demonstration include the following:

- Waiver of section 1866(j)(7)(C) of the Act, which was added by section 17004 of the 21st Century Cures Act. Effective for items and services furnished on or after October 1, 2017, the provision prohibits payment for items and services furnished within a temporary moratorium area by providers or suppliers who enroll after the effective date of such moratorium and who are within a category of providers and suppliers subject to such moratorium. We will allow payment to be made to providers and suppliers who enroll under the Demonstration and furnish items and services within a moratorium area, including those who were approved prior to this revised Demonstration.
- Waiver of § 424.570(a)(1)(iv) and (c). This regulation establishes moratoria rules for Medicare, Medicaid, and CHIP. Specifically, we will: (1) Exempt providers and suppliers from the moratoria if they submitted an application to their MAC prior to July 29, 2016 that was denied as a result of implementation of statewide moratoria; and (2) exempt providers and suppliers from any future moratoria if they have submitted an application to their MAC prior to the implementation date of that moratoria, without regard to provider type or geographic location. This waiver will be applicable to any moratoria that are implemented subsequent to, and for the duration of, this demonstration.
- Waiver of § 424.520(a) and (d), which establishes specific effective date requirements for certified providers and ambulance suppliers, respectively. This waiver will allow CMS to establish the effective date for a provider or supplier depending on whether access to care issues exist in the service area.

The authorities CMS previously waived under the original Demonstration, which we will continue to waive under the revised Demonstration, include the following:

- Waiver of §§ 424.518(c) and (d) and 455.434(a), which describe the fingerprinting rules for enrollment in Medicare, Medicaid and CHIP.[8] This waiver involves expanding the existing regulatory authority in two ways: (1) To include ambulance suppliers requesting a waiver under the Demonstration within the categories of providers and suppliers to which the FCBC requirements apply; and (2) to include managing employees within the associated individuals subject to an FCBC when the provider or supplier seeks to enroll pursuant to a waiver under the Demonstration. Additionally,

[8] According to 42 CFR 457.990, the enrollment screening requirements applicable to providers enrolling in Medicaid apply equally to those enrolling in CHIP.

CMS intends to modify the authority that currently requires denial or revocation of providers or suppliers who fail to submit fingerprints, to instead specify that a waiver application will be rejected if the provider or supplier fails to submit the required fingerprints within 30 days.

• Waiver of 1866(j)(3)(B) of the Act, which requires program instruction or regulatory interpretation in order to implement section 1866(j)(3) of the Act, Provisional Period of Enhanced Oversight for New Providers of Services and Suppliers. CMS intends to implement the requirements of section 1866(j)(3) of the Act for purposes of this Demonstration and in the absence of regulation or other instruction in order to allow for a 1-year period of enhanced oversight of newly enrolling providers and suppliers under this Demonstration.

• Waiver of section 1866(j)(8) of the Act and the regulations at 42 CFR 424.545, 42 CFR part 498, subparts D and E, and 42 CFR 405.803(b), which allow a provider or supplier the right to request a hearing with an administrative law judge and the Department Appeals Board in the case of denial. Under this Demonstration, denials of applications for a waiver may be appealed at a CMS level only, and any applicant to the Demonstration will waive their right to further appeal.

• Waiver of 1866(j)(7) of the Act and the regulations at 42 CFR 424.570 and 455.470, which specify that the moratoria must be implemented at a provider or supplier type level, in order to allow a case-by-case waiver process to moratoria.

Dated: August 6, 2018.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2018–17809 Filed 8–16–18; 4:15 pm]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[GN Docket Nos. 18–122, 17–183, RM–11791, RM–11778; FCC 18–91]

Expanding Flexible Use of the 3.7 to 4.2 GHz Band

AGENCY: Federal Communications Commission.

ACTION: Final action.

SUMMARY: In this document, the Federal Communications Commission (Commission or FCC) adopts certification and information collection requirements for 3.7–4.2 GHz band spectrum that will be available for new wireless uses while balancing desired speed to the market, efficiency of use, and effectively accommodating incumbent Fixed Satellite Service (FSS) and Fixed Service (FS) operations in the band.

DATES: The certification requirements are adopted effective August 20, 2018; except for *Earth Station and Space Station Information Collections* in paragraphs 7–12, which contain information collection requirements that have not been approved by the Office of Management and Budget. The FCC will publish a document in the **Federal Register** announcing the effective date for those requirements.

FOR FURTHER INFORMATION CONTACT: Christopher Bair of the International Bureau, Satellite Division, at 202–418–0945 or *christopher.bair@fcc.gov*. For information regarding the Paperwork Reduction Act contact Cathy Williams, Office of Managing Director, at (202) 418–2918 or *cathy.williams@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order,* GN Docket No. 18–122, FCC 18–91, adopted on July 12, 2018, and released on July 13, 2018. The complete text of this document is available for public inspection and copying from 8 a.m. to 4:30 p.m. Eastern Time (ET) Monday through Thursday or from 8 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street SW, Room CY–A257, Washington, DC 20554. The complete text is available on the Commission's website at *http://wireless.fcc.gov,* or by using the search function on the ECFS web page at *http://www.fcc.gov/cgb/ecfs/*. Alternative formats are available to persons with disabilities by sending an email to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (tty).

Paperwork Reduction Act

The Commission, as part of its continuing effort to reduce paperwork burdens, intends to invite the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the Commission will also seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

Congressional Review Act

The Commission will send a copy of this *Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act (CRA), *see* 5 U.S.C. 801(a)(1)(A).

I. Introduction

1. In this proceeding, the Commission is pursuing the joint goals of making spectrum available for new wireless uses while balancing desired speed to the market, efficiency of use, and effectively accommodating incumbent Fixed Satellite Service (FSS) and Fixed Service (FS) operations in the band. To gain a clearer understanding of the operations of current users in the 3.7–4.2 GHz band, the Commission is requiring certifications and collecting information on current FSS uses.

II. Background

2. In the 2017 Mid-Band Notice of Inquiry (*Mid-Band NOI*), the Commission began an evaluation of whether spectrum in-between 3.7 GHz and 24 GHz can be made available for flexible use—particularly for wireless broadband services.[1]

III. Order: Collecting Information on Satellite Usage of the Band

3. The record in response to the *Mid-Band NOI* reflects that the Commission's information regarding current use of the band is inaccurate and/or incomplete. Therefore, the Commission is collecting additional information to make an informed decision about the proposals discussed herein—including the scope of future FSS, FS, and potential mobile use of the band and the appropriate transition methodology. It is important that the Commission obtain a clear understanding of the operations of current users in the band. This user data will be vital to our consideration of how much spectrum could be made available, how incumbent operators could be protected, accommodated, or relocated, and the overall structure of the band going forward.

4. In furtherance of the Commission's goals of fostering more efficient and intensive use of the 3.7–4.2 GHz band as expeditiously as possible while protecting existing operations in the band from harmful interference, by this *Order* the Commission adopts the

[1] *Expanding Flexible Use in Mid-Band Spectrum Between 3.7 and 24 GHz,* GN Docket No. 17–183, Notice of Inquiry, 32 FCC Rcd 6373 (2017) (*Mid-Band NOI*).

certification and information collection requirements described in paragraphs 5–12 below. The Commission and the public will use the information collected to evaluate future use of the 3.7–4.2 GHz band. The information may also be used in defining incumbent earth stations to be protected from harmful interference consistent with parameters that may be developed in this proceeding. FSS operators may request confidential treatment of some or all of the information that they submit, consistent with the Commission's rules.[2]

5. *Earth Station Data.*— In order to evaluate the potential for a flexible use allocation in the 3.7–4.2 GHz band and determine how much spectrum could be made available, the Commission must evaluate the existing earth station usage of C-band satellites—including location and technical data that may be necessary to mitigate harmful interference. This information will assist the Commission in determining whether earth stations will need to be protected as well as how they may need to be protected depending on how the Commission moves forward with increasing the intensity of terrestrial use of the band. It will also allow the Commission to evaluate the feasibility of the various transition proposals.

6. The Commission directs operators of FSS earth stations, including temporary fixed or transportable earth stations, in the 3.7–4.2 GHz band that are licensed or registered (authorized) in International Bureau Filing System (IBFS) to certify the accuracy of all information reflected on their license or registration in IBFS. Given that they recently will have filed for new or modified licenses or registrations in IBFS, the Commission exempts from this *Order* those operators that file between April 19, 2018, and October 17, 2018, using the processes outlined in the *Earth Station Filing Window Public Notices,* including those that filed without coordination.[3] This certification is necessary to inform the Commission's decisions in this proceeding. Although the Commission does not require FSS earth station operators to provide additional information on their existing operations at this time, the Commission intends to seek comment on protecting only those earth stations licensed or registered in IBFS for which the licensee/registrant timely files the certification required in this *Order* (to the extent they registered before April 19, 2018). The Commission also intends to seek comment on whether further earth station information should be collected in the future to facilitate more efficient use of the 3.7–4.2 GHz band.[4]

7. Further, to account for the variable nature of temporary fixed or transportable earth stations,[5] the Commission orders all such operations to submit additional information about their operations regardless of when they were licensed or registered. This information shall include:

- Earth station call sign (or IBFS file number if a registration filed between April 19, 2018 and October 17, 2018, is pending);
- geographic location where the equipment is typically stored;
- the area within which the equipment is typically used;
- how often the equipment is used and the duration of such use (*i.e.,* please provide examples of typical deployments, *e.g.,* operation *x* days a week at sports arenas within a radius of *y* miles of its home base);
- number of transponders typically used in the 3.7–4.2 GHz band and extent of use on both the uplink and downlink; and
- licensee/registrant and point of contact information.

8. These data are needed to better understand the use of the band by temporary fixed or transportable operations. IBFS does not reflect the variations in the locations or intermittent use of such operations. This presents unique challenges for establishing a means of protecting temporary fixed or transportable operations against harmful interference.

9. The Commission directs the Wireless Telecommunications Bureau, International Bureau, and Office of Engineering and Technology (the Bureaus) to issue a Public Notice that will: (1) Provide detailed instructions for earth station licensees or registrants to file certifications regarding existing information in IBFS; (2) establish a window for initial filings of certifications; and (3) outline the details for temporary fixed or transportable earth stations to submit the information requested above. Because the Commission may use these data to inform its deliberations regarding the future use of the 3.7–4.2 GHz band, including possible interference avoidance coordination or relocation of facilities, the Commission encourages FSS earth station operators to update their information in the event of a change in any of the operational parameters.

10. *Space Station Data.*—In order to evaluate the potential for a flexible use allocation in the 3.7–4.2 GHz band and to determine how much spectrum could be made available, it is also necessary to evaluate the existing FSS downlink capacity of C-band satellites. This information will assist the Commission in determining whether there is sufficient capacity in the upper portion of the C-band to accommodate customers vacating transponders from the lower portion of the C-band. It will also allow the Commission to evaluate the feasibility of various transition proposals.

11. Accordingly, operators with existing FSS space station licenses or grants of United States market access in the 3.7–4.2 GHz band shall provide the following information:

- Satellite call sign, name, and orbital location;

[2] Although the Broadband Access Coalition argues that all of the information required to be submitted by earth stations is ''is no different from the detailed technical information provided, and made publicly available, for wireless providers in other services,'' and thus should not be afforded confidential treatment, Broadband Access Coalition June 29, 2018 *Ex Parte* Letter, GN Docket No. 18–122, at 4, the Commission will review and assess requests for confidential treatment for the information submitted in response to this information collection according to the procedures set forth in the Commission's rules. *See* 47 CFR 0.459.

[3] *See Temporary Freeze on Applications for New or Modified Fixed Satellite Service Earth Stations and Fixed Microwave Stations in the 3.7–4.2 GHz Band; 90-Day Window to File Applications for Earth Stations Currently Operating in 3.7–4.2 GHz Band,* GN Docket No. 17–183, WTB Docket No. 18–122, Public Notice, DA 18–398 at 1 (IB/PSHSB/WTB Apr. 19, 2018), 83 FR 21746 (May 10, 2018); *International Bureau Announces 90-Day Extension of Filing Window, to October 17, 2018, to File Applications for Earth Stations Currently Operating in 3.7–4.2 GHz Band, Filing Options for Operators with Multiple Earth Station Antennas,* Public Notice, DA 18–639 (IB Jun. 21, 2018), 83 FR 35454 (July 26, 2018) (collectively, the *Earth Station Filing Window Public Notices*).

[4] NCTA—The Internet & Television Association filed an *ex parte* suggesting that this information collection order was not properly noticed under the Administrative Procedure Act (APA). Letter from Danielle Piñeres, NCTA, to Marlene Dortch, FCC, GN Docket No. 18–122 at 1–3 (filed July 2, 2018). While the Commission has discretion to seek comment before undertaking an information collection, it has never taken the position that such comment is a necessary prerequisite. Because the information collection adopted here is designed solely to obtain the information necessary to evaluate whether to adopt future Commission rules, it has no direct ''future effect'' and as such is not a rule requiring notice under the APA. *See* 5 U.S.C. 551(4); *see also* 44 U.S.C. 3507(c) (providing for PRA approval of an information collection not contained in a proposed rule). After adoption of the present *Order,* the Commission will comply with the PRA's requirements, including by seeking public comment on, and Office of Management and Budget approval of, the final information collection before it becomes effective. As is permitted by the PRA, 44 U.S.C. 3506(c)(1)(B)(iii), this information collection is mandatory, but this *Order* does not specify any penalty for failure to respond.

[5] A temporary fixed or transportable earth station is a fixed earth station that remains at a location for less than six months. *See* 47 CFR 25.277. Operations from these fixed stations are on a temporary basis and therefore variable in nature. A satellite news gathering truck is a common example of a temporary fixed or transportable earth station.

• expected end-of-life for satellite;

• the approximate dates that any additional C-band satellites with a currently pending application in IBFS are planned for launch to serve the United States market (note whether this satellite is a replacement);

• whether any additional C-band satellites that do not have a currently pending application in IBFS are planned for launch to serve the United States market and the approximate date of such launch (note whether this satellite is a replacement);

• for each transponder operating in the 3.7–4.2 GHz range that is operational and legally authorized to serve customers in the United States, for the most recent month,[6] provide the following:

• the frequency range of transponder and transponder number;[7]

• the capacity in terms of the number of megahertz on each transponder that are currently under contract (also provide this data for one month in 2016);[8]

• For each day in the most recent month, please provide the percentage of each transponder's capacity (megahertz) utilized and the maximum capacity utilized on that day. (Parties should use the most recent month of data and provide the date range at which the data was collected; they may also supplement the data with historical trend data over recent months up to three years if they feel it displays utilization variances);

• the center frequency and bandwidth of the Telemetry Tracking and Command beam(s); and

• the call sign and geographic location (using NAD83 coordinates) of each TT&C receive site.

12. The Commission will seek approval from the Office of Management and Budget (OMB) before the information collection becomes effective, and following OMB approval, the Commission will publish notice of the effective date of the information collection and filing deadline in the **Federal Register**. The Commission also directs the Bureaus to consider whether additional information should be collected from either FSS earth station operators or satellite licensees and to seek notice and comment regarding the need to initiate a second information collection if such additional information is necessary to supplement the information submitted in this proceeding.

IV. Ordering Clauses

13. *It is further ordered* that pursuant to section 4(i) of the Communications Act of 1934, as amended, that this *Order is adopted* effective upon publication in the **Federal Register**. This *Order* contains information collection requirements subject to the Paperwork Reduction Act of 1995 that are not effective until approved by the Office of Management and Budget.

14. *It is further ordered* that the *notice of inquiry*, GN Docket No. 17–183, *Expanding Flexible Use in the Mid-Band Spectrum Between 3.7–24 GHz,* adopted on August 3, 2017, is terminated as to the 3.7–4.2 GHz band.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2018–17296 Filed 8–17–18; 8:45 am]

BILLING CODE 6712–01–P

[6] The "most recent month" will be defined in the Bureaus' forthcoming public notice and will be a month following release of this *Order*.

[7] For purposes of this information collection, "transponder number" refers to a standard 36 megahertz wide transponder and that transponder numbering (1–24) is based on the former center-frequency requirement for C-band space stations. *See* 47 CFR 25.211(a) (2014). While this rule is no longer in effect, most satellites providing service to the United States in the 3.7–4.2 GHz band are configured in accordance with the transponder plan described in the rule.

[8] The information collected will provide comparative data of transponder usage over time and allow the Commission and the public to evaluate options for the future use of the 3.7–4.2 GHz band.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 51 and 52

[WC Docket Nos. 17–244, 13–97; FCC 18–95]

Nationwide Number Portability; Numbering Policies for Modern Communications

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) adopts final rules based on public comments to promote nationwide number portability. These rules eliminate unnecessary toll interexchange dialing parity requirements and database query requirements that may result in obstacles and inefficiencies in an eventual nationwide number portability regime.

DATES: Effective September 19, 2018.

FOR FURTHER INFORMATION CONTACT: For further information about this proceeding, please contact Sherwin Siy, FCC Wireline Competition Bureau, Competition Policy Division, Room 5–C225, 445 12th St. SW, Washington, DC 20554, (202) 418–2783, *sherwin.siy@fcc.gov*. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, send an email to *PRA@fcc.gov* or contact Nicole Ongele at (202) 418–2991.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in WC Docket Nos. 17–244 and 13–97; FCC 18–95, adopted July 12, 2018 and released July 13, 2018. The full text of this document is available for public inspection during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW, Room CY–A257, Washington DC 20554. It is available on the Commission's website at *https://docs.fcc.gov/public/attachments/FCC-18-95A1.pdf.*

Synopsis

I. Introduction

1. The systems we use to make and route telephone calls are changing. With this Report and Order (Order), we set the stage for more efficient use of the telecommunications network and pave the way for nationwide number portability (NNP). We eliminate rules that were intended for a market that was divided along more static, segmented categories of telecommunications providers. Those rules are far less applicable to today's more integrated providers and pricing plans, and the North American Numbering Council has identified them as barriers to the achievement of NNP.

2. We forbear from the interexchange dialing parity requirements for competitive local exchange carriers (LECs), creating a more level playing field with the incumbent LECs who received forbearance from the interexchange dialing parity obligations in 2015, and ensuring that both categories of LECs will be able to route calls more efficiently in a future NNP environment. We also ease the requirement that the second-to-last carrier handling a call request query the local number portability database, allowing any carriers earlier in the chain to make the query if they so choose. This greater flexibility allows carriers in the call path to determine who is best placed to bear the costs of performing the query, and also ensures that *any* carrier—including originating carriers—can perform the query, a necessary step in certain NNP solutions.

3. These changes will help set the stage for further progress towards implementation of number portability

on a nationwide basis. The North American Numbering Council (a federal advisory committee to the Commission that provides guidance and recommendations on numbering policy and operations) recently approved a report issued by its Nationwide Number Portability Issues Working Group, which builds upon and refines earlier industry and NANC work, and recommends further inquiry and analysis on several specific questions to further explore NNP. We anticipate that the NANC will continue to assist the Commission in investigating these options and considerations.

II. Background

4. *Interexchange dialing parity requirements.* Dialing parity provisions were originally intended to ensure that incumbent LECs provided the same access to stand-alone long-distance service providers as they did to their own or their affiliates' long-distance offerings. These requirements grew out of the equal access requirements included in the 1982 *Modification of Final Judgment* in the federal antitrust case against AT&T, which imposed these requirements on the Bell Operating Companies (BOCs). The Telecommunications Act of 1996 (1996 Act) incorporated the MFJ's equal access requirements for these former BOCs into the Communications Act (the Act) via section 251(g). The 1996 Act also created more specific, affirmative equal access requirements in § 251(b) that applied to all LECs.

5. In the *2015 USTelecom Forbearance Order,* the Commission forbore from the ''application to incumbent LECs of all remaining equal access and dialing parity requirements for interexchange services, including those under section 251(g) and section 251(b)(3) of the Act.'' As we observed in the NPRM, this forbearance was well supported by the lessening need for the rules, as stand-alone long-distance services had declined, all-distance calling was growing more prevalent, and consumers were being offered yet more choices in voice service, including increasing growth in interconnected Voice over Internet Protocol (VoIP) services. The *2015 USTelecom Forbearance Order* left a limited number of toll dialing parity requirements in place, however, primarily for competitive LECs, and for certain customers of incumbent LECs who were then already presubscribed to third-party long-distance services at the time of the Order.

6. *N–1 Requirement.* The N–1 query requirement mandates that the carrier immediately preceding the terminating carrier (the N–1 carrier) be responsible for ensuring that the local number portability database—the Number Portability Administration Center/Service Management System (NPAC/SMS)—is queried. This requirement is specified in the North American Numbering Council's Architecture and Administrative Plan for Local Number Portability, which is in turn incorporated by reference in § 52.26(a) of the Commission's rules. (We note that § 52.26(c) of our rules provides information on how to obtain a copy of the *NANC Architecture Report* and *Working Group Report*. This Order updates that information. This simple revision, reflecting the new locations of the reports, does not require notice and comment.) The rule was put in place in part to ensure that the costs of querying the database could be split between originating and interexchange carriers, while ensuring that calls would not be left unqueried. The rule also allowed local number portability to proceed without requiring all carriers across the country to implement it simultaneously.

7. *NNP Notice of Proposed Rulemaking (NPRM).* In 2017, the Commission released the *NNP NPRM* (82 FR 55970) seeking comment on a proposal to forbear from the remaining interexchange dialing parity requirements of the Act, as well as a proposal to eliminate the rules implementing those requirements. We also sought comment on whether we should extend forbearance from the dialing parity requirements to customers with pre-existing stand-alone long-distance carriers, whose plans had been grandfathered in the *2015 USTelecom Forbearance Order*. We also sought comment on a proposal to eliminate the N–1 requirement for call routing. The *NNP NPRM* generated significant interest from numbering database administrators, trade associations, and service providers, representing the views of incumbent and competitive LECs, interexchange carriers, and carriers who provide both services. We received 21 comments and 11 reply comments in the record in response.

III. Discussion

8. In this Order, we expand the scope of the forbearance issued in the *2015 USTelecom Forbearance Order*. While that earlier order forbore from applying the dialing parity requirements of the Act to incumbent LECs, the requirements remained in place for competitive LECs, and also for a limited number of customers who were still presubscribed to stand-alone long-distance plans. This Order removes that disparity by applying the forbearance to these formerly excluded categories. We also ease the N–1 query requirement to ensure that it does not prevent originating carriers, or other carriers earlier than the N–1 carrier in a call flow, from performing the number portability query if they wish. Originating carriers, or parties they contract with, should be able to perform these queries, but if they do not, the responsibility for the query continues to fall upon the N–1 carrier. This change to our rules will allow carriers to have the routing flexibility necessary for certain types of NNP.

9. As explained in the *NNP NPRM,* our legal authority stems directly from section 251(e)(1) of the Communications Act, which gives the Commission ''exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States'' and provides that numbers must be made ''available on an equitable basis.'' The rule changes addressed in this Order fall squarely within this jurisdiction. In addition, section 10 of the Act states that the Commission shall forbear from applying any regulation or provision of the Act if it determines that: (1) Enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory; (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and (3) forbearance from applying such provision or regulation is consistent with the public interest. As discussed below, our forbearance from the remaining toll interexchange dialing parity requirements meets these criteria.

A. Forbearance From Toll Interexchange Dialing Parity Requirement and Elimination of Implementing Rules

10. *Forbearance from Interexchange Dialing Parity Provisions for Competitive LECs.* In the *NNP NPRM,* we noted that the same rationales of the *2015 USTelecom Forbearance Order* seemed to apply to the toll interexchange dialing parity requirements that remained in place for competitive LECS. We sought comment on whether these mandates, located in section 251(b)(3), served any purpose. The overwhelming consensus in the record is that they do not. Wireline customers have more choices, and stand-alone long-distance service is indeed less prevalent and significant than it was in decades past. Customers

for wireline voice services have more choices than they did in the past, including interconnected VoIP from both facilities-based and over-the-top providers. For example, the most recent Voice Telephone Services Report shows that interconnected VoIP subscriptions increased at a compound annual growth rate of 10 percent, while retail switched access lines declined at 12 percent per year from 2013 to 2016. This represents a continuing trend, with reports showing interconnected VoIP subscriptions increasing at a compound annual growth rate of 15 percent and retail switched access declining at 10 percent a year from December 2010 to December 2014. These findings, indicate increased options for consumers besides switched access, regardless of whether they may currently be served by a competitive or an incumbent LEC. The *NNP NPRM* sought comment on whether forbearance from these provisions would affect competitive LECs or their customers. No comments in the record indicate that the remaining dialing parity provisions for competitive LECs aid competition, ensure just and reasonable practices, or prevent unjust or unreasonable discrimination. No comments in the record indicate customer complaints stemming from the 2015 forbearance from these requirements for incumbent LECs, and commenters likewise did not disagree with our finding that extending the forbearance to competitive LECs would produce similarly benign results.

11. We therefore find that enforcement of the section 251(b)(3) dialing parity requirements for competitive LECs is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with a telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory. Nor is their enforcement necessary for the protection of consumers, since consumers can leave their competitive LEC for non-switched access services if that LEC makes choosing a separate long-distance provider difficult. As described in the *2015 USTelecom Forbearance Order,* wireline customers today have more choices than they did in 1982 or 1996, including interconnected VoIP services. Similarly, demand for stand-alone long-distance has continued to decline for both mass-market and business customers.

12. Extending to competitive LECs the forbearance granted in 2015 to incumbent LECs also promotes fairness in the application and enforcement of these requirements that would otherwise be lacking. Furthermore, forbearing from a requirement that no longer serves its purpose promotes the public interest by reducing the costs of regulatory compliance. We therefore find that forbearing from the dialing parity requirements of section 251(b)(3) serves the public interest.

13. USTelecom notes that extending this forbearance to competitive LECs is not sufficient to achieve NNP. NNP is naturally a multi-stage process requiring a series of changes to various aspects of policy and possible other rules. We recognize this, but as many commenters have pointed out, the stage for NNP can be set incrementally, while forbearing from unnecessary requirements in the interim. As noted in the *NNP NPRM,* forbearing from these requirements could allow for more efficient routing than would otherwise be possible under a number of NNP models. USTelecom itself notes eliminating an unnecessary requirement may increase regulatory flexibility and make a wider range of solutions possible in the future.

14. *Grandfathered dialing parity requirements.* The *NNP NPRM* also sought comment on eliminating the dialing parity requirements that had been ''grandfathered'' after the adoption of the *2015 USTelecom Forbearance Order*. We find that the number of customers with grandfathered stand-alone long-distance plans continues to decline, and thus extending forbearance from the dialing parity requirements to these plans, as well will further encourage NNP. In the interest of maintaining a level playing field, forbearance applies to all customers. Thus, neither incumbent nor competitive LECs are required to abide by the toll dialing parity requirements for customers who have preexisting stand-alone long-distance plans.

15. WTA and ITTA both note that the same factors that spurred forbearance from the dialing parity requirements in the *2015 USTelecom Forbearance Order* apply even more prominently now: The stand-alone long-distance market remains small, and the number of preexisting plans among incumbent LEC customers will only have fallen since 2015. There is no evidence in the record to indicate that the trends observed in the *2015 USTelecom Forbearance Order* have slowed or reversed course.

16. Although GCI and Aureon argue that the Commission should maintain the exemption from forbearance for preexisting plans in more rural areas, we find the decline in the total number of these plans and our need to modernize our systems to allow for NNP are compelling reasons to extend forbearance. We recognize that there are a limited number of interexchange carriers in parts of Alaska and Iowa and, in certain cases, the incumbent LEC remains the only option for voice service. We must, however, take these first steps to eliminate outdated and rarely-used regulations if we are to realize the consumer and competitive benefits of NNP.

17. This Order also does not affect the applicability of section 258(a) or our slamming rules, as GCI argues. Section 258(a) prohibits carriers from changing a subscriber's choice of exchange service without going through the proper verification procedures, and also explicitly permits state regulators to enforce anti-slamming provisions. Those provisions continue to operate to prevent incumbent LECs from changing subscribers' selections of other providers without following the necessary verification procedures. While the *2015 USTelecom Forbearance Order* expressed concern that forbearance from equal access requirements might allow increased pressure from incumbent LECs, it did not presume to forbear from section 258, and we do not so presume now. Those anti-slamming provisions continue to operate as before, and will continue to be enforced.

18. *Eliminating toll dialing parity rules.* The *NNP NPRM* also sought comment on eliminating the Commission's toll dialing parity rules promulgated under section 251(b)(3). No commenters found any reason for these rules to stay in place while we forbear from the interexchange dialing parity requirements of section 251(b)(3). We agree that in light of our decision to forbear from section 251(b)(3), there is no sound justification to retain these rules. Therefore, to eliminate any possible confusion and to streamline the Commission's rules, we therefore eliminate those provisions.

B. Allowing Alternatives to N–1 Call Routing

19. The *NNP NPRM* proposed eliminating the N–1 requirement, since it may lead to unnecessary and inefficient routing of calls in an NNP environment. However, as anticipated when it was adopted, and as noted in the record, standardization around having the N–1 carrier perform the number portability database query has allowed for more uniformity and prevented confusion. In the interest of providing flexibility for anticipated changes to the number porting system, while preserving the certainty and stability of existing systems, we ease, but do not eliminate, the rule.

20. We noted in the *NNP NPRM* that preventing queries by the originating carrier could lead to inefficiencies, and that some reports had indicated that eliminating the N–1 rule would be beneficial. However, we are persuaded by the record that carriers will benefit from the certainty of having a default rule that clearly names a responsible party in the absence of an agreement otherwise. We therefore amend our rules to allow upstream carriers to perform number portability database queries, but require the N–1 carriers to perform the queries if the upstream carriers have not.

21. The *NANC Architecture Report* states that an N–1 carrier ''is responsible for ensuring queries are performed on an N–1 basis.'' However, as we have noted, requiring the N–1 carrier to perform the query can lead to inefficiencies in call routing in an NNP environment. Neustar, Incompas, the Voice on the Net Coalition (VON Coalition), and Charter all agree that the N–1 requirement is no longer necessary and urge the Commission to eliminate it to prevent the possible routing complications that could come with NNP. Neustar further points out that the N–1 requirement actually provides little distinction for most calls, since few consumers have an interexchange carrier that is different from their originating (local) provider. In those situations, the N–1 carrier is the originating carrier, meaning that the N–1 requirement is unnecessary. NCTA and Comcast suggest waiting to eliminate the rule until after transition to the new Number Portability Administration Center has occurred, a process that is now complete.

22. Many other commenters urge more caution, however, noting that elimination of the rule without some specification about who must perform the query could lead to confusion and possible call completion issues. Others disagree. In light of the record, we believe it best to chart a middle course: We eliminate any requirement that would prevent an upstream carrier from voluntarily making queries rather than the N–1 carrier. In other words, we revise the N–1 rule as a default in the absence of other agreements. This revision accords with CenturyLink and iconectiv's interpretation of the *NANC Architecture Report* that the current rule for N–1 queries operates as a default rule. Although we disagree with those commenters and find a change is necessary, the result gives carriers the flexibility to efficiently route calls in an NNP environment.

23. Retaining the N–1 rule as a backstop also addresses commenters' concerns that eliminating the N–1 rule would effectively mandate originating carriers to perform queries, raising their costs due to increased querying and potential upgrades necessary to handle this increased volume. Moreover, we permit, but do not require, originating carriers to make the database query. Should originating carriers decline to perform the number portability database query for interexchange calls, the rule will continue to require interexchange carriers to bear the cost of the query. Furthermore, the N–1 carrier will have fulfilled its responsibility to ensure the query is performed if *any* carrier preceding it in the call flow has already performed the query. While we anticipate that in NNP scenarios this will most likely be the originating carrier, the rule would not prevent other parties from performing the query as well. Therefore, we adjust the N–1 rule, eliminating § 52.26(a)'s incorporation by reference of the *NANC Architecture Report's* version of the rule and amending the rule to allow queries by carriers other than the N–1 carrier.

IV. Procedural Matters

24. *Final Regulatory Flexibility Act Analysis.* Pursuant to the Regulatory Flexibility Act of 1980, as amended, the Commission's Final Regulatory Flexibility Analysis for the *Order* is included in part V.

25. *Paperwork Reduction Act.* This document does not contain new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

26. *Congressional Review Act.* The Commission will send a copy of this Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act (CRA), *see* 5 U.S.C. 801(a)(1)(A).

27. *Materials in Accessible Formats.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

28. *Additional Information.* For additional information on this proceeding, contact Sherwin Siy, FCC Wireline Competition Bureau, Competition Policy Division, (202) 418–2783, *Sherwin.Siy@fcc.gov*.

V. Final Regulatory Flexibility Analysis

29. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *NNP NPRM.* The Commission sought written public comment on the proposals in the *NPRM,* including comments on the IFRA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the Final Rules

30. In this Order, we modernize our systems by setting the stage for more efficient use of the telecommunications network, and pave the way for nationwide number portability (NNP). We eliminate rules that were intended for a market that was divided along more static, segmented categories of telecommunications providers. Those rules are far less applicable to today's more integrated providers and pricing plans and may lead to complications that stand in the way of achieving NNP.

31. We forbear from the interexchange dialing parity requirements for competitive local exchange carriers (LECs), creating a more level playing field with the incumbent LECs who received forbearance from their interexchange dialing parity obligations through the *2015 USTelecom Forbearance Order.* Specifically, we revise § 51.205 and remove §§ 51.209, 51.213 and 51.215. We also amend § 52.26(a) to allow originating carriers to perform number portability database queries in the Number Portability Administration Center/Service Management System (NPAC/SMS), but require the N–1 carriers to perform the queries if the originating carriers have not. This allows greater flexibility for different carriers to determine who is best placed to bear the cost of performing the query.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

32. The Commission did not receive comments specifically addressing the rules and policies proposed in the IRFA.

C. Response to Comments by Chief Counsel for Advocacy of the Small Business Administration

33. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

34. The RFA directs agencies to provide a description and, where

feasible, an estimate of the number of small entities that may be affected by the final rules adopted pursuant to the NNP NPRM. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small-business concern'' under the Small Business Act. Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' A ''small-business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

35. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive small entity size standards that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States which translates to 28.8 million businesses.

36. Next, the type of small entity described as a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of Aug 2016, there were approximately 356,494 small organizations based on registration and tax data filed by nonprofits with the Internal Revenue Service (IRS).

37. Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data from the 2012 Census of Governments indicates that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 37,132 General purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,184 Special purpose governments (independent school districts and special districts) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of governments in the local government category shows that the majority of these governments have populations of less than 50,000. Based on this data we estimate that at least 49,316 local government jurisdictions fall in the category of ''small governmental jurisdictions.''

38. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as ''establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.'' The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. Census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms in this industry can be considered small.

39. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable NAICS Code category is for Wired Telecommunications Carriers, as defined in paragraph 11 of this FRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. The Commission therefore estimates that most providers of local exchange carrier service are small entities that may be affected by the rules adopted.

40. *Incumbent Local Exchange Carriers (incumbent LECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers as defined in paragraph 11 of this FRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 3,117 firms operated in that year. Of this total, 3,083 operated with fewer than 1,000 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies adopted. One thousand three hundred and seven (1,307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers. Of this total, an estimated 1,006 have 1,500 or fewer employees.

41. *Competitive Local Exchange Carriers (competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate NAICS Code category is Wired Telecommunications Carriers, as defined in paragraph 11 of this FRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees. Based on this data, the Commission concludes that the majority of Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. In addition, 72 carriers have reported that they are Other Local Service Providers. Of this total, 70 have 1,500 or fewer employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small

entities that may be affected by the adopted rules.

42. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a definition for Interexchange Carriers. The closest NAICS Code category is Wired Telecommunications Carriers as defined in paragraph 11 of this FRFA. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of this total, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted.

43. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, all operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities.

44. *Toll Resellers.* The Commission has not developed a definition for Toll Resellers. The closest NAICS Code Category is Telecommunications Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, 1,341 operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of this total, an estimated 857 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of toll resellers are small entities.

45. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable NAICS Code category is for Wired Telecommunications Carriers as defined above. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of Other Toll Carriers can be considered small. According to internally developed Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage. Of these, an estimated 279 have 1,500 or fewer employees. Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by the rules.

46. *Prepaid Calling Card Providers.* The SBA has developed a definition for small businesses within the category of Telecommunications Resellers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. According to the Commission's Form 499 Filer Database, 500 companies reported that they were engaged in the provision of prepaid calling cards. The Commission does not have data regarding how many of these 500 companies have 1,500 or fewer employees. Consequently, the Commission estimates that there are 500 or fewer prepaid calling card providers that may be affected by the rules.

47. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves, such as cellular services, paging services, wireless internet access, and wireless video services. The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, Census data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had fewer than 1,000 employees. Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) services. Of this total, an estimated 261 have 1,500 or fewer employees. Consequently, the Commission estimates that approximately half of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

48. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined ''small business'' for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these definitions.

49. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite). Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to Commission data, 413 carriers reported that they were engaged in wireless telephony. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Therefore, a little less

than one third of these entities can be considered small.

50. *Cable and Other Subscription Programming.* This industry comprises establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. The broadcast programming is typically narrowcast in nature (*e.g.* limited format, such as news, sports, education, or youth-oriented). These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers. The SBA has established a size standard for this industry stating that a business in this industry is small if it has 1,500 or fewer employees. The 2012 Economic Census indicates that 367 firms were operational for that entire year. Of this total, 357 operated with less than 1,000 employees. Accordingly we conclude that a substantial majority of firms in this industry are small under the applicable SBA size standard.

51. *Cable Companies and Systems (Rate Regulation).* The Commission has developed its own small business size standards for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers nationwide. Industry data indicate that there are currently 4,600 active cable systems in the United States. Of this total, all but nine cable operators nationwide are small under the 400,000-subscriber size standard. In addition, under the Commission's rate regulation rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Current Commission records show 4,600 cable systems nationwide. Of this total, 3,900 cable systems have fewer than 15,000 subscribers, and 700 systems have 15,000 or more subscribers, based on the same records. Thus, under this standard as well, we estimate that most cable systems are small entities.

52. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000 are approximately 52,403,705 cable video subscribers in the United States today. Accordingly, an operator serving fewer than 524,037 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that all but nine incumbent cable operators are small entities under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

53. *All Other Telecommunications.* ''All Other Telecommunications'' is defined as follows: ''This U.S. industry is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing internet services or voice over internet protocol (VoIP) services via client supplied telecommunications connections are also included in this industry.'' The SBA has developed a small business size standard for ''All Other Telecommunications,'' which consists of all such firms with gross annual receipts of $32.5 million or less. For this category, Census Bureau data for 2012 show that there were 1,442 firms that operated for the entire year. Of those firms, a total of 1,400 had annual receipts less than $25 million. Consequently, we conclude that the majority of All Other Telecommunications firms can be considered small.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

54. In this *Order,* we forbear from the toll interexchange dialing parity requirements for competitive LECs creating a more level playing field with the incumbent LECs who received forbearance from their interexchange dialing parity obligations through the *2015 USTelecom Forbearance Order.* Specifically, we revise § 51.205 and remove §§ 51.209, 51.215 and 51.215. We also amend the § 52.26(a) requirement that the second-to-last carrier handling a call request is responsible for ensuring that the NPAC/SMS is queried, explaining that carriers earlier in the chain are allowed to make the query if they so choose. The revisions and elimination of rules remove impediments to NNP and do not impose any reporting, recordkeeping, or other compliance requirements.

F. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

55. The RFA requires an agency to describe any significant, specifically small business alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): ''(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.''

56. The rules adopted herein remove dialing parity requirements for competitive LECs and allows the second-to-last carrier handling a call request to query the NPAC/SMS in a manner that allows more flexibility. As a result, the economic impact on affected carriers should be minimal because they impose no new requirements.

G. Report to Congress

57. The Commission will send a copy of the *Order,* including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Order,* including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**.

VI. Ordering Clauses

29. *It is ordered,* pursuant to sections 1, 4(i), 10, 201(b), and 251(e) of the Communication Act of 1934, as amended, 47 U.S.C. 151, 154(i), 160, 201(b), and 251(e) that this *Report and Order is adopted.*

30. *It is further ordered* that parts 51 and 52 of the Commission's rules, 47 CFR 51.205, 51.209, 51.213, 51.215, 52.26 are amended as set forth in the

''Final Rules'' section below, and that this amendment shall be effective 30 days after publication of this Report and Order in the **Federal Register**.

31. *It is further ordered* that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Report and Order* to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Parts 51 and 52

Communications common carriers, Telecommunications, Telephone.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer, Office of the Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 51 and 52 as follows:

PART 51—INTERCONNECTION

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

Authority: 47 U.S.C. 151–55, 201–05, 207–09, 218, 225–27, 251–52, 271, 332 unless otherwise noted.

■ 2. Revise § 51.205 to read as follows:

§ 51.205 Dialing parity: General.

A local exchange carrier (LEC) shall provide local dialing parity to competing providers of telephone exchange service, with no unreasonable dialing delays. Dialing parity shall be provided for originating telecommunications services that require dialing to route a call.

§ 51.209 [Removed]

■ 3. Remove § 51.209.

§ 51.213 [Removed]

■ 4. Remove § 51.213.

§ 51.215 [Removed]

■ 5. Remove § 51.215.

PART 52—NUMBERING

■ 6. The authority citation for part 52 is revised to read as follows:

Authority: 47 U.S.C. 151–55, 201–05, 207–09, 218, 225–27, 251–54, 271, 303(r), 332, 1302.

■ 7. Amend § 52.26 by:

■ a. Revising paragraph (a);

■ b. Redesignating paragraphs (b)(1) through (3) as paragraphs (b)(2) through (4);

■ c. Adding a new paragraph (b)(1); and

■ d. Revising paragraph (c).

The revisions and addition read as follows:

§ 52.26 NANC Recommendations on Local Number Portability Administration.

(a) Local number portability administration shall comply with the recommendations of the North American Numbering Council (NANC) as set forth in the report to the Commission prepared by the NANC's Local Number Portability Administration Selection Working Group, dated April 25, 1997 (*Working Group Report*) and its appendices, which are incorporated by reference pursuant to 5 U.S.C. 552(a) and 1 CFR part 51. *Except that:* Sections 7.8 and 7.10 of *Appendix D* and the following portions of *Appendix E:* Section 7, Issue Statement I of Appendix A, and Appendix B in the *Working Group Report* are *not* incorporated herein.

(b) * * *

(1) Each designated N–1 carrier (as described in the *Working Group Report*) is responsible for ensuring number portability queries are performed on a N–1 basis where ''N'' is the entity terminating the call to the end user, or a network provider contracted by the entity to provide tandem access, unless another carrier has already performed the query;

* * * * *

(c) The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the *Working Group Report* and its appendices can be inspected during normal business hours at the following locations: FCC Reference Information Center, 445 12th Street SW, Room CY–A257, Washington, DC 20554 or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html*. The *Working Group Report* and its appendices are also available on the internet at *https://docs.fcc.gov/public/attachments/DOC-341177A1.pdf.*

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 10–90; DA 18–710]

Connect America Fund

AGENCY: Federal Communications Commission.

ACTION: Final action.

SUMMARY: In this document, the Wireline Competition Bureau (WCB), the Wireless Telecommunications Bureau (WTB) (jointly referred to herein as the Bureaus), and the Office of Engineering and Technology (OET) adopt requirements promoting greater accountability for certain recipients of Connect America Fund (CAF) high-cost universal service support, including price cap carriers, rate-of-return carriers, rural broadband experiment (RBE) support recipients, Alaska Plan carriers, and CAF Phase II auction winners. Specifically, the Bureaus and OET establish a uniform framework for measuring the speed and latency performance for recipients of high-cost universal service support to serve fixed locations.

DATES: This final action is effective September 19, 2018.

FOR FURTHER INFORMATION CONTACT: Suzanne Yelen, Wireline Competition Bureau, (202) 418–7400 or TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order in WC Docket No. 10–90; DA 18–710, adopted on July 6, 2018 and released on July 6, 2018. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street SW, Washington, DC 20554 or at the following internet address: *https://docs.fcc.gov/public/attachments/DA-18-710A1.pdf.*

I. Introduction

1. In the Order, the Bureaus and OET adopt requirements promoting greater accountability for certain recipients of CAF high-cost universal service support, including price cap carriers, rate-of-return carriers, RBE support recipients, Alaska Plan carriers, and CAF Phase II auction winners. Specifically, the Bureaus and OET establish a uniform framework for measuring the speed and latency performance for recipients of high-cost universal service support to serve fixed locations.

2. The Bureaus and OET also require providers to submit testing results as

part of their annual compliance certification. Carriers that do not comply with the Bureaus and OET's speed and latency requirements will be subject to a reduction in support, commensurate with their level of noncompliance. In addition, providers will be subject to audit of all testing data. With this testing and compliance framework, the Bureaus and OET aim to maximize the benefits consumers reap from its high-cost universal service programs in even the hardest-to-reach areas, thus making the best use of its Universal Service Fund (USF) dollars and further closing the digital divide.

II. Choice of Testing Method

3. The Bureaus and OET provide high-cost support recipients that serve fixed locations three options to afford flexibility in choosing solutions to conduct required performance testing. Specifically, the Bureaus and OET conclude that eligible telecommunications carriers (ETCs) subject to fixed broadband performance obligations may conduct required testing by employing either (1) Measuring Broadband America (MBA) testing infrastructure (MBA testing), (2) existing network management systems and tools (off-the-shelf testing), or (3) provider-developed self-testing configurations (provider-developed self-testing or self-testing). Providers may employ any of these three options as long as the provider's implementation meets the testing requirements established in this Order. The Bureaus and OET define the three options as follows:

- First, a high-cost support recipient may use MBA testing by arranging with entities that manage and perform testing for the MBA program to implement performance testing, as required, for CAF. The provider is responsible for all costs required to implement testing of its network, including any costs associated with obtaining and maintaining Whiteboxes, to the extent that any additional Whiteboxes are employed as part of the MBA testing. The Bureaus and OET note that the MBA testing must occur in areas and for the locations supported by CAF, *e.g.,* in CAF Phase II eligible areas for price cap carriers and for specific built-out locations for RBE, Alternative Connect America Cost Model (A–CAM), and legacy rate-of-return support recipients.
- Second, a high-cost support recipient may elect to use existing network management systems and tools, ping tests, and other commonly available performance measurement and network management tools—off-the-shelf testing—to implement performance testing.
- Third, a high-cost support recipient may implement a provider-developed self-testing configuration using software installed on residential gateways or in equipment attached to residential gateways to regularly initiate speed and latency tests. Providers that implement self-testing of their own networks may make network performance testing services available to other providers. The Bureaus and OET continue to consider whether the Universal Service Administrative Company (USAC) may have a role in offering server capacity at an internet Exchange Point in an FCC-designated metropolitan area (FCC-designated IXP), without any oversight role in conducting tests, to mitigate smaller providers' costs.

4. By providing these three options, the Bureaus and OET ensure that there is a cost-effective method for conducting testing for providers of different sizes and technological sophistication. The Bureaus and OET do not require that providers invest in and implement new internal systems; instead, providers may perform speed and latency tests with readily-available, off-the-shelf solutions or existing MBA infrastructure. On the other hand, some providers may prefer implementing their own self-testing systems, especially if such testing features are already built into CPE for the carrier's own network management purposes. These three options allow the provider to align required performance testing with their established network management systems and operations, making it as easy as possible for carriers to implement the required testing while establishing rigorous testing parameters and standards, based on real-world data.

5. The Bureaus and OET recognize that self-testing using provider-developed software may create opportunities for ''manipulation or gaming'' by CAF recipients. However, the Bureaus and OET believe that the testing and compliance requirements they adopt will minimize the possibility of such behavior. First, as explained in more detail in the following, the Bureaus and OET will be requiring providers to submit and certify testing data annually. Second, USAC will be verifying provider compliance and auditing performance testing results.

6. The Bureaus and OET reject Alaska Communications' proposal that high-cost support recipients may submit radio frequency propagation maps in lieu of conducting speed tests to demonstrate compliance with speed obligations. Such maps are only illustrative of planned, ''theoretical'' coverage and do not provide actual data on what consumers experience. The Bureaus and OET therefore require providers to conduct the required testing using one of the three options identified in this document.

III. General Testing Parameters

7. All ETCs subject to fixed broadband performance obligations must conduct the required speed and latency testing using the parameters in this Order, regardless of which of the three testing options the carrier selects. The Bureaus and OET first define ''test'' and the associated span of measurement, in the context of these performance measurements. Next, the Bureaus and OET adopt requirements regarding when tests must begin and when exactly carriers may perform the tests, and they set the number of active subscriber locations carriers must test, with variations depending on the size of the carrier. Finally, the Bureaus and OET address how high-latency bidders in the CAF Phase II auction must conduct required voice testing.

8. To maintain a stringent performance compliance regime while avoiding unnecessary burdens on smaller carriers, the Bureaus and OET allow flexibility concerning the specific testing approach so that carriers can select, consistent with its adopted framework, the best and most efficient testing methods for their particular circumstances. The Bureaus and OET encourage the use of industry testing standards, such as the TR–143 Standard, for conducting self-testing.

9. For reasons similar to those outlined in the *CAF Phase II Price Cap Service Obligation Order,* 78 FR 70881, November 27, 2013, the Bureaus and OET require that high-cost support recipients serving fixed locations perform these tests over the measurement span already applicable to price cap carriers receiving CAF Phase II model-based support. ETCs must test speed and latency from the customer premises of an active subscriber to a remote test server located at or reached by passing through an FCC-designated IXP. Accordingly, a speed test is a single measurement of download or upload speed of 10 to 15 seconds duration between a specific consumer location and a specific remote server location. Similarly, a latency test is a single measurement of latency, often performed using a single User Datagram Protocol (UDP) packet or a group of three internet Control Message Protocol (ICMP) or UDP packets sent at essentially the same time, as is common with ping tests.

10. Large and small ETCs alike commit to providing a certain level of

service when accepting high-cost support to deploy broadband. ''Testing . . . on only a portion of the network connecting a consumer to the internet core will not show whether that customer is able to enjoy high-quality real-time applications because it is network performance from the customer's location to the destination that determines the quality of the service from the customer's perspective.'' Although the measurement span the Bureaus and OET adopt may include transport (*e.g.,* backhaul or transit) that a provider does not control, the carrier can influence the quality of transport purchased and can negotiate with the transport provider for a level of service that will enable it to meet the Commission's performance requirements. This is true for both price cap carriers and smaller carriers. The Bureaus and OET therefore disagree with suggestions that testing should only occur within a provider's own network because providers do not always control the portion of the network reaching the nearest FCC-designated IXP.

11. Previously, the Bureaus and OET designated the following ten locations as FCC-designated IXPs: New York City, NY; Washington, DC; Atlanta, GA; Miami, FL; Chicago, IL; Dallas-Fort Worth, TX; Los Angeles, CA; San Francisco, CA; Seattle, WA; and Denver, CO. All of these areas, except Denver, are locations used by the MBA program, which selected these locations because they are geographically distributed major U.S. Internet peering locations. Denver was added to the list so that all contiguous areas in the United States are within 700 miles of an FCC-designated IXP. Because the Bureaus and OET are expanding testing to additional CAF recipients, they add the following six metropolitan areas as additional FCC-designated IXPs: Salt Lake City, UT; St. Paul, MN; Helena, MT; Kansas City, MO; Phoenix, AZ; and Boston, MA. This expanded list ensures that most mainland U.S. locations are within 300 air miles of an FCC-designated IXP, and all are within approximately 500 air miles of one. Further, the Bureaus and OET find that there is no reason to limit testing to the provider's nearest IXP; rather, providers can use any FCC-designated IXP for testing purposes.

12. Still, the Bureaus and OET recognize that non-contiguous providers face unique challenges in providing service outside the continental U.S. The distance between a carrier and its nearest IXP affects latency and may affect speed as well. At this time, the Bureaus and OET do not have sufficient data to determine the extent of the effect of distance on speed performance testing. Therefore, similar to the existing exception for non-contiguous price cap carriers accepting model-based CAF Phase II support, the Bureaus and OET permit all providers serving non-contiguous areas greater than 500 air miles from an FCC-designated IXP to conduct all required latency and speed testing between the customer premises and the point at which traffic is aggregated for transport to the continental U.S. The Bureaus and OET have identified a sufficient number of IXPs so that no point in the continental U.S. is more than approximately 500 miles from an FCC-designated IXP. Therefore, allowing non-contiguous providers located more than 500 miles from an FCC-designated IXP to test to the point in the non-contiguous area where traffic is aggregated for transport to the mainland will prevent these providers from being unfairly penalized for failing to meet their performance obligations solely because of the location of the areas being served. However, as the Commission gains additional MBA and other data on speed and latency from non-contiguous areas, the Bureaus and OET may revisit this conclusion.

13. First, the Bureaus and OET establish the specific test intervals within the daily test period. For latency, the Bureaus and OET require a minimum of one discrete test per minute, *i.e.,* 60 tests per hour, for each of the testing hours, at each subscriber test location, with the results of each discrete test recorded separately. The Bureaus and OET note that intensive consumer use of the network (such as streaming video) during testing, referred to as cross-talk, can influence both consumer service and testing results. The data usage load for latency testing is minimal; sending 60 UDP packets of 64 bytes each in one hour is approximately 4,000 bytes in total. However, to prevent cross-talk from negatively affecting both the consumer experience and test results, the Bureaus and OET adopt consumer load thresholds—*i.e.,* cross-talk thresholds—similar to those used by the MBA program. Accordingly, for latency testing, if the consumer load exceeds 64 Kbps downstream, the provider may cancel the test and reevaluate whether the consumer load exceeds 64 Kbps downstream before retrying the test in the next minute. Providers who elect to do more than the minimum required number of latency tests at subscriber test locations must include the results from all tests performed during testing periods in their compliance calculations.

14. For speed, the Bureaus and OET require a minimum of one download test and one upload test per testing hour at each subscriber test location. The Bureaus and OET note that speed testing has greater network impact than latency testing. For speed testing, the Bureaus and OET require providers to start separate download and upload speed tests at the beginning of each test hour window. As with latency, the Bureaus and OET adopt cross-talk thresholds similar to those used in the MBA program. If the consumer load is greater than 64 Kbps downstream for download tests or 32 Kbps upstream for upload tests, the provider may defer the affected download or upload test for one minute and reevaluate whether the consumer load exceeds the relevant 64 Kbps or 32 Kbps threshold before retrying the test. This load check-and-retry must continue at one-minute intervals until the speed test can be run or the one-hour test window ends and the test for that hour is canceled. Also as with latency, providers who elect to do more than the minimum required number of speed tests at subscriber test locations must include the results from all tests performed during testing periods for compliance calculations.

15. Second, to capture any seasonal effects on a carrier's broadband performance, the Bureaus and OET require that carriers subject to the latency and speed testing requirements conduct one week of testing in each quarter of the calendar year. Specifically, carriers must conduct one week of testing in each of the following quarters: January through March, April through June, July through September, and October through December. By requiring measurements quarterly, rather than in four consecutive weeks, the Bureaus and OET expect test results to reflect a carrier's performance throughout the year, including during times of the year in which there is a seasonal increase or decrease in network usage. Although previously WCB required price cap carriers receiving CAF Phase II support to test latency for two weeks each quarter, the Bureaus and OET find that requiring testing one week each quarter strikes a better balance of accounting for seasonal changes in broadband usage and minimizing the burden on consumers who may participate in testing.

16. Third, in establishing the daily testing period, the Bureaus and OET slightly expand the test period and require that carriers conduct tests between 6:00 p.m. and 12:00 a.m. (testing hours), including on weekends.

The Bureaus and OET continue to find that MBA data supports its conclusion that there is a peak period of internet usage every evening. However, the Bureaus and OET intend to revisit this requirement periodically to determine whether peak internet usage times have changed substantially.

17. The Bureaus and OET conclude that requiring measurements over an expanded period, by including one hour before the peak period and one hour after, will best ensure that carriers meet the speed and latency obligations associated with the high-cost support they receive. MBA data shows that broadband internet access service providers that perform well during the peak period tend to perform well consistently throughout the day. Further, the Bureaus and OET required schedule of testing is consistent with the specific, realistic standards they set forth which were developed using MBA peak-period data. Thus, the Bureaus and OET will be judging testing hours data based on a standard developed using MBA data from the same time period.

18. Additionally, the Bureaus and OET disagree with assertions that requiring speed testing during the peak period will introduce problematic network congestion over the provider's core network. Based on MBA speed test data, a download service speed test for 10 Mbps requires approximately 624 MB combined downloaded data for 50 locations per hour. This is less traffic than what would be generated by streaming a little less than one-half of a high-definition movie. A download service speed test for 25 Mbps requires approximately 1,841 MB combined downloaded data for 50 locations, which is about the same amount of traffic as a little less than two high-definition movies. The small amount of data should have no noticeable effect on network congestion. Upload test data-usage is even lower. Based upon MBA speed test data, a one-hour upload service speed test for 1 Mbps and 3 Mbps for 50 locations will be approximately 57 MB and 120 MB, respectively. This testing will use bandwidth equivalent to uploading 12 photos to a social media website at 1 Mbps or 24 photos at 3 Mbps. To the extent that a carrier is concerned about possible impacts on the consumer experience, the Bureaus and OET permit carriers the flexibility to choose whether to stagger their tests, so long as they do not violate any other testing requirements, as they explain in their discussion of the testing intervals in the following.

19. Fourth, testing for all locations in a single speed tier in a single state must be done during the same week. If a provider has more than one speed tier in a state, testing for each speed tier can be conducted during different weeks within the quarter. For a provider serving multiple states, testing of each service tier does not need to be done during the same week, *i.e.,* a provider may test its 10/1 Mbps customers in New York one week and in Pennsylvania during a different week. The Bureaus and OET will generally consider requests for waiver or extension in cases where a major, disruptive event (*e.g.,* a hurricane) negatively affects a provider's broadband performance. However, prior to requesting a waiver, providers should determine whether rescheduling testing within the 3-month test window will be sufficient to handle the disruptive event.

20. The Bureaus and OET require that carriers test up to 50 locations per CAF-required service tier offering per state, depending on the number of subscribers a carrier has in a state. The subscribers eligible for testing must be at locations that are reported in the HUBB where there is an active subscriber. The Bureaus and OET decline to adopt a simple percentage-based alternative but, instead, adopt the following scaled requirements for each state and service tier combination for a carrier:

REQUIRED TEST LOCATIONS FOR SPEED

Number of subscribers at CAF-supported locations per state and service tier combination	Number of test locations
50 or fewer	5.
51–500	10% of total subscribers.
Over 500	50.

The Bureaus and OET recognize that it is possible that a carrier serving 50 or fewer subscribers in a state and particular service tier cannot find the required number of five active subscribers for testing purposes. To the extent necessary, the Bureaus and OET permit such carriers to test existing, non-CAF-supported active subscriber locations within the same state and service tier to satisfy its requirement of testing five active subscriber locations. Carriers may voluntarily test the speed and/or latency of additional randomly selected CAF-supported subscribers over the minimum number of required test locations as part of their quarterly testing. However, data for all tested locations must be submitted for inclusion in the compliance calculations, *i.e.,* carriers must identify the set of testing locations at the beginning of the testing and cannot exclude some locations during or after the testing.

21. Carriers must test an adequate number of subscriber locations to provide a clear picture of the carrier's performance and its customers' broadband experience across a state. The Bureaus and OET find that 50 test locations, per speed tier per state, remains a good indicator as to whether providers are fulfilling their obligations. A sample size of 50 test locations out of 2,500 or more subscribers provides a picture of carriers' performance with a ±11.5 percent margin of error and 90 percent confidence level. Testing 50 locations out of more than 500 subscribers yields a comparable picture of carriers' performance. The Bureaus and OET acknowledge, however, that smaller carriers may find testing 50 locations burdensome. Below 2,500 CAF-supported subscribers, greater percentages of subscribers are necessary to achieve the same margin of error and confidence level, but below 500 subscribers the necessary percentage rises quickly above 10 percent. Carriers serving fewer subscribers would thus be unable to provide test results achieving the same margin of error and confidence level without testing a more proportionately burdensome percentage of their subscribers.

22. The Bureaus and OET also now find it preferable to use the number of subscribers in a state and service tier, rather than the number of lines for which a provider is receiving support, to determine the required number of test locations. A carrier receiving support for 2,000 lines serving 100 subscribers would find it much more difficult to test 50 active subscriber locations, compared to a carrier receiving support for 2,000 lines but serving 1,500 subscribers, and commenters have noted that providers may find it difficult to find a sufficient

number of locations if they have relatively few subscribers. Basing the number of locations to be tested on the number of subscribers, rather than the number of lines, addresses this concern.

23. The Bureaus and OET therefore require testing a specific number of subscribers for carriers serving more than 500 subscribers in a single service tier and state, but require carriers serving between 51 and 500 subscribers in a single service tier and state to test a fixed percentage of subscribers. For carriers serving 50 or fewer subscribers in a state and service tier, a percentage-based alternative may be insufficient; in an extreme situation, data from a single subscriber cannot clearly demonstrate a carrier's speed and latency performance. Accordingly, the Bureaus and OET require those providers to test a specific number of active subscriber locations. The Bureaus and OET conclude that this scaled approach balances the need to test a reasonable number of subscriber locations within a state based on the total number of subscribers and performance tiers with minimizing the burden on smaller providers to find consumer locations to be tested. The Bureaus and OET note, also, that a carrier receiving different types of CAF funding in the same state should aggregate its customers in each speed tier for purposes of testing. The following examples illustrate how this scaled approach should be implemented:

- A carrier with 2,300 customers subscribed to a single service tier of 10/1 Mbps in one state must test 50 locations in that state, while a carrier providing solely 25/3 Mbps service to over 2,500 subscribers in each of three states must test 50 locations in each state.
- A carrier providing 10/1 Mbps service and 25/3 Mbps service to 100 subscribers each in a single state must test 10 locations for each of the two service tiers—20 locations in total.
- A carrier providing solely 10/1 Mbps service to 30 subscribers must test five locations, and if that carrier is only able to test three CAF-supported locations, that carrier must test two non-CAF-supported locations receiving 10/1 Mbps service in the same state.
- A carrier with 2,000 customers subscribed to 10/1 Mbps in one state through CAF Phase II funding and 500 RBE customers subscribed to 10/1 Mbps in the same state, and no other high-cost support with deployment obligations, must test a total of 50 locations in that state for the 10/1 Mbps service tier.

24. Test subjects must be randomly selected every two years from among the provider's active subscribers in each service tier in each state. Subscribers for latency testing may be randomly selected from those subscribers being tested for speed at all speed tiers or randomly selected from all CAF-supported subscribers, every two years. Any sample location lacking an active subscriber 12 months after that location was selected must be replaced by an actively subscribed location, randomly selected. Random selection will ensure that providers cannot pick and choose amongst subscribers so that only those subscribers likely to have the best performance (*e.g.,* those closest to a central office) are tested. Carriers may use inducements to encourage subscribers to participate in testing. This may be particularly useful in cases where support is tied to a particular performance level for the network but the provider does not have enough subscribers to higher performance service to test to comply with the testing sample sizes. However, to ensure that the selection remains random, carriers must offer the same inducement to all randomly-selected subscribers in the areas for which participating subscribers are required for the carrier to conduct testing. WCB will provide further guidance regarding random selection by public notice.

25. The Bureaus and OET reiterate the Commission's requirement that high-latency providers subject to testing must demonstrate a Mean Opinion Score (MOS) of four or higher. The Bureaus and OET agree with ADTRAN, Inc. (ADTRAN) that listening-opinion tests would not suffice to demonstrate a high-quality consumer voice experience. Latency only minimally affects participants' experiences and evaluations in listening-opinion tests, which involve passive listening to audio samples. However, in the *USF/ICC Transformation Order,* 76 FR 73830, November 29, 2011, the Commission required ''ETCs to offer sufficiently low latency to enable use of real-time applications, such as VoIP.'' Unlike a listening-opinion test, in a conversation-opinion test, two participants actively participate in a conversation. The back-and-forth of conversations highlights delay, echo, and other issues caused by latency in a way that one-way, passive listening cannot. Therefore, the Bureaus and OET require that high-latency providers conduct an ITU–T Recommendation P.800 conversational-opinion test.

26. Specifically, the Bureaus and OET require the use of the underlying conversational-opinion test requirements specified by the ITU–T Recommendation P.800, with testing conditions as described in the following. The Bureaus and OET believe that MOS testing under these conditions will ensure that the test results reflect the consumer experience as accurately as possible. First, high-latency providers must use operational network infrastructure, such as actual satellite links, for conducting MOS testing, not laboratory-based simulations intended to reproduce service conditions. Second, the tests must be implemented using equipment, systems, and processes that are used in provisioning service to locations funded by high-cost universal service support. Third, live interviews and surveys must be conducted by an independent agency or organization (Reviewer) to determine the MOS. Survey forms, mail-in documentation, automated phone calls, or other non-interactive and non-person-to-person interviews are not permitted. Any organization or laboratory with experience testing services for compliance with telecommunications industry-specified standards and, preferably, MOS testing experience, may be a Reviewer. Fourth, testing must be conducted over a ''single hop'' satellite connection with at least one endpoint at an active subscriber location using the subscriber's end-user equipment. Finally, the second endpoint may be a centralized location from which the Reviewer conducts live interviews with the subscriber to determine the subscriber's MOS evaluation.

27. To reduce the burden of the MOS testing for high-latency bidders while still ensuring high-quality voice service, the Bureaus and OET adopt a separate scaled table for the number of locations that are subject to MOS testing. Specifically, the Bureaus and OET will determine the number of testing locations based upon the number of subscribers nationally for which CAF-supported service is provided. The Bureaus and OET recognize that the satellite infrastructures employed by many high-latency bidders have characteristics different from terrestrial networks that make testing of satellite service on a national, rather than state, basis appropriate. That is, middle-mile/backhaul for satellite networks are the direct links from the consumer locations to the satellite and then from the satellite to selected downlink sites, so there is unlikely to be significant variability based on the state in which the subscriber is located. The consumers must be randomly selected from the total CAF-supported subscriber base in all applicable states to ensure that different types of geographic locations are tested.

REQUIRED TEST LOCATIONS FOR MOS TESTING

Number of subscribers at CAF-supported locations nationally	Number of MOS test locations
3500 or fewer	100
Over 3500	370

This scaled, nationwide testing requirement will reduce high-latency bidders' testing burden while ensuring a sufficient testing sample to verify compliance with voice performance requirements.

IV. Compliance Framework

28. The Bureaus and OET extend the existing standard for full compliance with high-cost support recipients' latency obligations and adopt a standard for full compliance with speed obligations. The Bureaus and OET also establish a compliance framework outlining specific actions for various degrees of compliance that fall short of those standards.

29. The Bureaus and OET reaffirm the existing low-latency and high-latency standards and establish a speed standard for full compliance. The data on round-trip latency in the United States has not markedly changed since the 2013 *CAF Phase II Price Cap Service Obligation Order,* and no party has challenged the Commission's reasoning for the existing 100 ms latency standard. Accordingly, the Bureaus and OET conclude that all high-cost support recipients serving fixed locations, except those carriers submitting high-latency bids in the CAF Phase II auction, must certify that 95 percent or more of all testing hours measurements of network round-trip latency are at or below 100 ms. High-latency bidders must certify that 95 percent or more of all testing hours measurements are at or below 750 ms. Providers must record the observed latency for all latency test measurements, including all lost packet tests. Thus, providers may not discard lost-packet tests from their test results; these tests count as discrete tests not meeting the standard.

30. For speed, the Bureaus and OET require that 80 percent of download and upload measurements be at or above 80 percent of the CAF-required speed tier (*i.e.,* an 80/80 standard). For example, if a carrier receives high-cost support for 10/1 Mbps service, 80 percent of the download speed measurements must be at or above 8 Mbps, while 80 percent of the upload speed measurements must be at or above 0.8 Mbps. The Bureaus and OET require carriers to meet and test to their CAF obligation speed(s) regardless of whether their subscribers purchase internet service offerings with advertised speeds matching the CAF-required speeds at CAF-eligible locations. Thus, carriers that have deployed a network with the requisite speeds must include all subscribers at that level in their testing, but may still find it necessary to upgrade individual subscriber locations, at least temporarily, to conduct speed testing. For example, a carrier may be required to deploy and offer 100/20 Mbps service, but only 5 of its 550 subscribers at CAF-supported locations take 100/20 Mbps service, with the remainder taking 20/20 Mbps service. To satisfy its testing obligations, the carrier would be required to (1) test all 5 of the 100/20 Mbps subscribers and (2) randomly select 45 of its other CAF-supported subscribers, raise those subscribers' speed to 100/20 Mbps, at least temporarily, and test those 45 subscribers.

31. The Bureaus and OET believe that this standard best meets its statutory requirement to ensure that high-cost-supported broadband deployments provide reasonably comparable service as those available in urban areas. The most recent MBA report cites the 80/80 standard as a ''key measure'' of network consistency. MBA data show that all fixed terrestrial broadband technologies that are included in the MBA program can meet this standard. The Bureaus and OET are confident that high-cost support recipients' newer fixed broadband deployments will benefit from more up-to-date technologies and network designs that should provide even better performance.

32. Further, the Bureaus and OET expect that a realistic 80/80 standard will provide a ''cushion'' to address certain testing issues. The Bureaus and OET noted in this document that some commenters expressed concern that they would be responsible for testing to an IXP even though that involved the use of backhaul that a provider may not control. The Bureaus and OET believe that the 80/80 standard allows sufficient leeway to providers so that they will meet performance standards as long as they have reasonable backhaul arrangements. In addition, commenters have raised a concern that speed testing could possibly show misleadingly low results if the subscriber being tested is using the connection at the time of the testing. However, the testing methodology addresses this concern. As with the MBA, the Bureaus and OET allow rescheduling of testing in instances where the customer usage exceeds MBA cross-talk thresholds. Thus, the Bureaus and OET do not anticipate that customer cross-talk will affect CAF performance data any more (or less) than the MBA program data on which its standard is based. Customer usage should not prevent carriers with appropriately constructed networks from meeting its requirements.

33. The Bureaus and OET find that a speed standard similar to what they have adopted for latency to measure broadband speed performance, as proposed by ADTRAN, is not appropriate. Staff analysis has found that this standard would not ensure CAF-supported service that is comparable to that in urban areas. The 2016 MBA Report stated that ''[c]onsistency of speed may be more important to customers who are heavy users of applications that are both high bandwidth and sensitive to short duration declines in actual speed, such as streaming video.'' A speed standard relying on an average or median value would not ensure consistency of speed because the distribution of values around the median may vary significantly. A carrier could meet such a standard by ensuring that the average or median speed test meets a target speed, while not providing sufficiently fast service nearly half the time or to nearly half its subscribers in locations supported by universal service. The Bureaus and OET therefore conclude that the 80/80 standard they adopt herein is a better measure of comparability and high-quality service.

34. Finally, the Bureaus and OET recognize that, because of technical limitations, it is currently unrealistic to expect that providers obligated to provide gigabit service, *i.e.,* speeds of 1,000 Mbps, achieve actual speeds of 1,000 Mbps download at the customer premises. Typical customer premises equipment, including equipment for gigabit subscribers, permits a maximum throughput of 1 Gbps, and the overhead associated with gigabit internet traffic (whether in urban or rural areas) can reach up to 60 Mbps out of the theoretical 1 Gbps. Customer premises equipment with higher maximum throughput are generally more costly and not readily available. Thus, even if a gigabit provider were to ''overprovision'' its gigabit service, the subscriber would not experience speeds of 1,000 Mbps. The Bureaus and OET do not want to discourage carriers from bidding in the upcoming CAF auction to provide 1 Gbps service by requiring unachievable service levels. The Bureaus and OET note that the 80/80 standard they adopt requires gigabit carriers to demonstrate that 80 percent of their testing hours download speed tests are at or above 80 percent of 1,000 Mbps, *i.e.,* 800 Mbps. This standard

should not pose a barrier to carriers bidding to provide 1 Gbps service.

35. Consistent with the Commission's universal service goals, the Bureaus and OET adopt a compliance framework that encourages ETCs to comply fully with their performance obligations and includes the potential for USAC to audit test results. The Bureaus and OET establish a four-level framework that sets forth particular obligations and automatic triggers based on an ETC's degree of compliance with its latency, speed, and, if applicable, MOS testing standards in each state and high-cost support program. The Bureaus and OET will determine a carrier's compliance for each standard separately. In each case, the Bureaus and OET will divide the percentage of its measurements meeting the relevant standard by the required percentage of measurements to be in full compliance.

36. In other words, for latency, in each state in which the carrier has CAF-supported locations, the Bureaus and OET will calculate the percentage of compliance using the 95-percent standard, so they will divide the percentage of the carrier's testing hours' latency measurements at or below the required latency (*i.e.,* 100 ms or 750 ms) by 95. As an example, if a low-latency provider observes that 90 percent of all its testing hours measurements are at or below 100 ms, then that provider's latency compliance percentage would be 90/95 = 94.7 percent in that state. For speed, for each speed tier and state the Bureaus and OET will calculate the percentage of compliance relative to the 80-percent-based standard, so they will divide the percentage of the carrier's testing hours speed measurements at or above 80 percent of the target speed by 80. Thus, if a provider observes that 65 percent of its testing hours speed measurements meet 80 percent of the required speed, the provider's compliance percentage would be 65/80 = 81.25 percent for the relevant speed tier in that state. Carriers must include and submit the results from all tests and cannot exclude any tests conducted beyond the minimum numbers of tests, as outlined in this Order, for the calculation of latency and speed compliance percentages.

37. For MOS testing, the high-latency bidder must demonstrate a MOS of 4 or higher, so a high-latency bidder would calculate its percentage of compliance relative to 4. Thus, a provider demonstrating a MOS of 3 would have a compliance percentage of ¾ = 75 percent. For a high-latency bidder conducting MOS testing across its entire network, rather than state-by-state, the Bureaus and OET will calculate the same MOS compliance percentage for each state that it serves with CAF Phase II support.

38. To avoid penalizing a provider for failing to meet multiple standards for the same locations, the Bureaus and OET adopt a streamlined compliance framework in which the lowest of a carrier's separate latency, speed, and, if applicable, MOS compliance percentages (including percentages for each speed tier) determines its obligations. All carriers not fully compliant in a particular state must submit quarterly reports providing one week of testing hours test results, subject to the same requirements the Bureaus and OET establish in this Order, and describing steps taken to resolve the compliance gap, and USAC will withhold a percentage of a non-compliant carrier's monthly support. Whenever a carrier in Levels 1 through 3 comes into a higher level of compliance, that level's requirements will apply, and USAC will return the withheld support up to an amount reflecting the difference between the levels' required withholding but not including any support withheld by USAC for more than 12 months.

39. The Bureaus and OET define Level 1 compliance to include carriers with compliance percentages at or above 85 but below 100 percent, and they direct USAC to withhold 5 percent of a Level 1-compliant carrier's monthly support. Level 2 compliance includes carriers with compliance percentages at or above 70 but below 85 percent, and the Bureaus and OET direct USAC to withhold 10 percent of a Level 2-compliant carrier's monthly support. Level 3 compliance includes carriers with compliance percentages at or above 55 but below 70 percent, and the Bureaus and OET direct USAC to withhold 15 percent of a Level 3-compliant carrier's monthly support. Level 4 compliance includes carriers with compliance percentages below 55 percent, and the Bureaus and OET direct USAC to withhold 25 percent of a Level 4-compliant carrier's monthly support. The Bureaus and OET will also refer Level 4-compliant carriers to USAC for an investigation into the extent to which the carrier has actually deployed broadband in accordance with its deployment obligations. The following table provides a summary of the compliance framework, where *x* is the carrier's compliance percentage:

COMPLIANCE LEVELS AND SUPPORT REDUCTIONS

	Qualifying compliance percentage x	Required quarterly reporting	Monthly support withheld (percent)
Full Compliance	$x \geq 100\%$	No	N/A
Level 1	$85\% \leq x < 100\%$	Yes	5
Level 2	$70\% \leq x < 85\%$	Yes	10
Level 3	$55\% \leq x < 70\%$	Yes	15
Level 4	$x < 55\%$	Yes	25

40. Similar to commenters' proposals, the framework the Bureaus and OET adopt resembles the non-compliance framework for interim deployment milestones in section 54.320(d) of the Commission's rules. The Bureaus and OET emphasize that the goal of this compliance framework is to provide incentives, rather than penalize. Balancing commenters' concerns regarding the severity or leniency of a such a framework, the Bureaus and OET conclude that its framework appropriately encourages carriers to come into full compliance and offer, in areas requiring high-cost support, broadband service meeting standards consistent with what consumers typically experience.

41. Finally, the Bureaus and OET provide one exception to this non-compliance framework. As discussed in this document, carriers that serve 50 or fewer subscribers in a state and particular service tier but cannot find five active subscribers for conducting the required testing may test non-CAF-supported active subscriber locations to the extent necessary. Because those carriers' test results would not solely reflect the performance of CAF-supported locations, any such carriers not fully complying with the Bureaus

and OET latency and speed standards will be referred to USAC for further investigation of the level of performance at the CAF-supported locations.

42. The Commission requires that providers subject to these testing requirements annually certify and report the results to USAC, which may audit the test results. To facilitate compliance monitoring, the Bureaus and OET require providers to submit speed and latency test results, including the technologies used to provide broadband at the tested locations, for each state and speed tier combination in addition to an annual certification in a format to be determined by WCB; high-latency bidders conducting MOS testing across their entire networks, rather than state-by-state, may submit and certify MOS test results on a nationwide basis. To minimize the burden on providers, USAC will calculate the compliance percentages required using the data submitted. By requiring carriers to submit test results annually, or quarterly if they are not fully in compliance with the Bureaus and OET standards, and having USAC perform the compliance calculations, the Bureaus and OET minimize the potential for any manipulation or gaming of the testing regime, as providers will be required to certify to a set of specific results rather than to a general level of compliance. Because of the need to develop a mechanism for collecting the testing data and obtain Paperwork Reduction Act (PRA) approval, carriers will be required to submit the first set of testing data and accompanying certification by July 1, 2020. This submission should include data for at least the third and fourth quarters of 2019. Subsequently, data and certifications will be due by July 1 of each year for the preceding calendar year. WCB will provide further guidance by public notice regarding how carriers will submit their testing data and certifications. Together with USAC audits and possible withholding of support, the Bureaus and OET believe these measures will provide ample incentives for carriers to comply with their obligations.

V. Procedural Matters

A. Paperwork Reduction Act

43. This Order contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), it previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. In this present document, the Commission has assessed the effects of the new and modified rules that might impose information collection burdens on small business concerns, and find that they either will not have a significant economic impact on a substantial number of small entities or will have a minimal economic impact on a substantial number of small entities.

B. Congressional Review Act

44. The Commission will send a copy of this Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

45. As required by the Regulatory Flexibility Act of 1980 (RFA), as amended, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *USF/ICC Transformation FNPRM,* 76 FR 78384, December 16, 2011. The Commission sought written public comment on the proposals in the *USF/ICC Transformation FNPRM,* including comment on the IRFA. The Commission did not receive any relevant comments on the *USF/ICC Transformation FNPRM* IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

46. As a condition of receiving high-cost universal service support, eligible telecommunications carriers (ETCs) must offer broadband service in their supported areas that meets certain basic performance requirements. ETCs subject to broadband performance obligations must currently offer broadband with latency suitable for real-time applications, such as VoIP, and meet a minimum speed standard of 10 Mbps downstream and 1 Mbps upstream or greater. Recipients of high-cost support must also test their broadband networks for compliance with speed and latency metrics and certify and report the results to the Universal Service Administrative Company (USAC) and the relevant state or tribal government on an annual basis, with those results subject to audit.

47. In the Order, the Bureaus and OET define how ETCs with Connect America Fund (CAF) Phase II, Alternative Connect America Cost Model (A–CAM), rate-of-return mandatory buildout, rural broadband experiment (RBE), or Alaska Plan obligations must test speed and latency and certify and report the results. Specifically, the Bureaus and OET establish a uniform framework for measuring speed and latency performance. The Bureaus and OET permit three testing methods as options for ETCs to conduct the required speed and latency tests, and the Bureaus and OET provide a definition for a ''test'' in this context and specify the measurement span associated with these tests. The Bureaus and OET establish specific test parameters for latency and speed, including how often and how many tests must be conducted and the minimum test sample size. The Bureaus and OET also establish voice testing requirements for high-latency bidders in the CAF Phase II auction. Finally, the Bureaus and OET define compliance for latency and speed standards and establish the required certifications, as well as a compliance framework providing strong incentives for ETCs to meet its standards.

48. With the testing framework the Bureaus and OET have adopted herein, they have provided maximum flexibility to reduce the burden on smaller entities, consistent with ensuring that these carriers are meeting their latency and speed requirements. Smaller entities required to do testing can choose from one of three methodologies to conduct the required testing. All entities providing broadband service should already use testing mechanisms for internal purposes, such as ensuring that customers are receiving the appropriate level of service and troubleshooting in response to customer complaints. In addition, the Bureaus and OET will be providing an online portal so entities can easily submit all of their test results electronically and USAC will do all of the necessary compliance calculations.

49. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small-business concern'' under the Small Business Act. A small-business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

50. The Bureaus and OET actions, over time, may affect small entities that are not easily categorized at present. The Bureaus and OET therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9 percent of all businesses in the United States which translates to 28.8 million businesses.

51. Next, the type of small entity described as a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of August 2016, there were approximately 356,494 small organizations based on registration and tax data filed by nonprofits with the Internal Revenue Service (IRS).

52. Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data from the 2012 Census of Governments indicates that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 37,132 General purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,184 Special purpose governments (independent school districts and special districts) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of governments in the local government category shows that the majority of these governments have populations of less than 50,000. Based on this data the Bureaus and OET estimate that at least 49,316 local government jurisdictions fall in the category of ''small governmental jurisdictions.''

53. In the Order, the Bureaus and OET establish for high-cost support recipients serving fixed locations a uniform framework for measuring speed and latency performance and define the requisite standards for full compliance with those providers' speed and latency obligations. The Commission's existing rules require that high-cost recipients report ''[t]he results of network performance tests pursuant to the methodology and in the format determined by the Wireline Competition Bureau, Wireless Telecommunications Bureau, and the Office of Engineering and Technology'' and that ETCs retain such records for at least ten years from the receipt of funding.

54. The Bureaus and OET now provide some color to this requirement; they require providers to submit speed and latency test results, including the technologies used to provide broadband at the tested locations, for each state and speed tier combination in addition to an annual certification in a format to be determined by WCB. High-latency bidders conducting mean opinion score (MOS) testing across their entire networks, rather than state-by-state, may submit and certify MOS test results on a nationwide basis. To minimize the burden on providers, USAC will calculate the compliance percentages required using the data submitted. By requiring carriers to submit test results annually and having USAC perform the compliance calculations, the Bureaus and OET minimize the potential for any manipulation or gaming of the testing regime, as providers will be required to certify to a set of specific results rather than to a general level of compliance. However, providers that are not fully compliant with the speed and latency standards must submit quarterly reports including one week of test results and describing steps taken to resolve the compliance gap.

55. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. The Bureaus and OET have considered all of these factors subsequent to receiving substantive comments from the public and potentially affected entities. The Wireline Competition Bureau, Wireless Telecommunications Bureau, and Office of Engineering and Technology have considered the economic impact on small entities, as identified in any comments filed in response to *USF/ICC Transformation FNPRM* and IRFA, in reaching its final conclusions and taking action in this proceeding.

56. In the Order, the Bureaus and OET adopt a clear, uniform framework for high-cost support recipients serving fixed locations to test speed and latency to meet the obligations associated with the support they receive. The requirements the Bureaus and OET adopt provide flexibility for carriers to choose between different testing methods suitable for carriers of different sizes and technological sophistication. Instead of requiring providers to invest in and implement new internal systems, the Bureaus and OET permit providers to perform speed and latency tests with readily available off-the-shelf solutions or existing MBA infrastructure. The Bureaus and OET expect that carriers with testing features built into customer premises equipment for their own network management purposes may prefer using their own self-testing systems, which they also permit.

57. The Bureaus and OET require that carriers, regardless of their preferred testing methods, conduct tests using the same parameters they establish. These parameters take into account smaller carriers' circumstances to avoid disproportionately burdening them. For example, the Bureaus and OET expand the list of locations to which carriers may conduct required tests—allowing smaller carriers that are farther from the largest metropolitan areas to test speed and latency over shorter distances. The Bureaus and OET also permit providers to conduct tests to the designated area of their choosing, rather than to the nearest designated metropolitan area. Further, carriers with fewer subscribers in a state and broadband service tier may test fewer locations. Greater percentages of subscribers are necessary to achieve the same margin of error and confidence level in smaller sample sizes, but the Bureaus and OET recognize that, below 450 subscribers, that necessary percentage rises quickly above 10 percent. Accordingly, in the Order, the Bureaus and OET allow providers with between 51 and 450 subscribers in a particular state and service tier combination to test 10 percent of total subscribers. The Bureaus and OET require providers with fewer than 50 subscribers in a particular state and service tier combination to test five locations, but, to the extent necessary, those carriers may test existing, non-CAF-supported active subscriber locations to satisfy that requirement.

58. Finally, the Bureaus and OET provide clarity regarding the Commission's existing requirement that carriers must report the results of network performance tests. Carriers must annually (or, in some cases,

quarterly) submit detailed results of the required tests, conducted pursuant to the parameters the Bureaus and OET establish. The Bureaus and OET hold all carriers to the same speed and latency test standards, but they recognize that requiring carriers to take the additional step of using their test results to determine their level of compliance may entail unnecessary burdens. Although the Bureaus and OET anticipate that carriers will find the adopted compliance framework straightforward, they conclude that requiring submission of the actual test results and allowing USAC to calculate the compliance percentages lessens the burden on small entities even further.

VI. Ordering Clauses

59. Accordingly, *it is ordered* that, pursuant to sections 1, 4(i), 5(c), 201(b), 214, and 254 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 151, 154(i), 155(c), 201(b), 214, 254, 1302, §§ 0.91 and 0.291 of the Commission's rules, 47 CFR 0.91, 0.291, and the delegations of authority in paragraph 170 of the *USF/ICC Transformation Order,* FCC 11–161, this Order *is adopted*, effective thirty (30) days after publication of the text or summary thereof in the **Federal Register**, except for the requirements in paragraphs 38 and 42 that are subject to the PRA, which will become effective upon announcement in the **Federal Register** of OMB approval of the subject information collection requirements.

Federal Communications Commission.

Kris A. Monteith,

Chief, Wireline Competition Bureau.

[FR Doc. 2018–17338 Filed 8–17–18; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 83, No. 161
Monday, August 20, 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 HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 190

[USCBP–2018–0029]

RIN 1515–AE23

Modernized Drawback; Correction

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document corrects a proposed regulation in a notice of proposed rulemaking published in the **Federal Register** of August 2, 2018, regarding Modernized Drawback. Specifically, CBP inadvertently proposed in 19 CFR 190.32(d)(2) an exemption for drawback claims for wine which included an imprecise reference to the entirety of paragraph (b). The reference should have been only to paragraphs (b)(1) and (b)(2), the specific paragraphs regarding the ''lesser of'' rule. As is evident from the entirety of the proposed rule, paragraph (b)(3), which implements the statutory prohibition on double drawback, applies to all drawback claims for wine. This technical correction remedies a clerical error that occurred when the language of paragraph (b)(3) was moved from a different part of the proposed regulations.

DATES: August 20, 2018.

FOR FURTHER INFORMATION CONTACT: Randy Mitchell, U.S. Customs and Border Protection, Office of Trade, Trade Policy and Programs, 202–863–6532, *randy.mitchell@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION: In proposed rule FR Doc. 2018–16279 appearing on page 37886 in the **Federal Register** issue of August 2, 2018, the following corrections are made:

1. On page 37936 in the first column, correct § 190.32 by revising paragraph (d)(2) to read as follows: § 190.32 Substitution unused merchandise drawback.

* * * * *

(d) * * *

(2) *Allowable refund.* For any drawback claim for wine (as defined in § 190.2) based on subsection (j)(2), the total amount of drawback allowable will be equal to 99 percent of the duties, taxes, and fees paid with respect to the imported merchandise, without regard to the limitations in paragraph (b)(1) or (b)(2).

Dated: August 14, 2018.

Robert E. Perez,

Acting Deputy Commissioner, U.S. Customs and Border Protection.

Approved:

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 2018–17847 Filed 8–17–18; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1

[Docket No. FDA–2012–D–1002]

Supplemental Questions and Answers Regarding Food Facility Registration; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of availability.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing the availability of a draft guidance for industry entitled ''Supplemental Questions and Answers Regarding Food Facility Registration.'' This draft guidance is intended to supplement the guidance document entitled ''Questions and Answers Regarding Food Facility Registration.''

DATES: Submit either electronic or written comments on the draft guidance by October 19, 2018 to ensure that the Agency considers your comment on the draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

Instructions: All submissions received must include the Docket No. FDA–2012–D–1002 for ''Supplemental Questions and Answers Regarding Food Facility Registration.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

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

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

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Office of Compliance, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance.

FOR FURTHER INFORMATION CONTACT: Courtney Buchanan, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2487.

SUPPLEMENTARY INFORMATION:

I. Background

We are announcing the availability of a draft guidance for industry entitled ''Supplemental Questions and Answers Regarding Food Facility Registration.'' We are issuing the draft guidance consistent with our good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on this topic. This draft guidance does not establish any rights for any person and is not binding on FDA or the public. You can use an alternate approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

Elsewhere in this issue of the **Federal Register**, FDA is announcing the guidance document entitled ''Questions and Answers Regarding Food Facility Registration (Seventh Edition),'' to which this draft guidance is a supplement. We intend to finalize this draft guidance document by incorporating the questions and answers into a future edition of the guidance document entitled ''Questions and Answers Regarding Food Facility Registration (Seventh Edition).''

II. Electronic Access

Persons with access to the internet may obtain the draft guidance at either *https://www.fda.gov/FoodGuidances* or *https://www.regulations.gov.* Use the FDA website listed in the previous sentence to find the most current version of the guidance.

Dated: August 14, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–17852 Filed 8–17–18; 8:45 am]

BILLING CODE 4164–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2018–0587; FRL–9982–58—Region 9]

Revisions to California State Implementation Plan; South Coast Air Quality Management District, San Joaquin Valley Air Pollution Control District and Yolo-Solano Air Quality Management; Nonattainment New Source Review Requirements for the 2008 8-Hour Ozone Standard

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve three state implementation plan (SIP) revisions submitted by the State of California addressing the nonattainment new source review (NNSR) requirements for the 2008 8-hour ozone National Ambient Air Quality Standards (NAAQS). These SIP revisions address the South Coast Air Quality Management District (SCAQMD or District), San Joaquin Valley Air Pollution Control District (SJVAPCD or District) and Yolo-Solano Air Quality Management District (YSAQMD or District) portions of the California SIP. This action is being taken pursuant to the Clean Air Act (CAA or ''Act'') and its implementing regulations.

DATES: Any comments must arrive by September 19, 2018.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2018–0587 at *http://www.regulations.gov,* or via email to *R9AirPermits@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be removed or edited from *Regulations.gov*. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Laura Yannayon, EPA Region 9, (415) 972–3534, *yannayon.laura@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, the terms ''we,'' ''us,'' and ''our'' refer to EPA.

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VI. Statutory and Executive Order Reviews

I. Background and Purpose

On March 12, 2008, the EPA promulgated a revised 8-hour ozone NAAQS of 0.075 parts per million (ppm).[1] Upon promulgation of a new or revised NAAQS, the CAA requires the EPA to designate as nonattainment any area that is violating the NAAQS based on the three most recent years of ambient air quality data. The three California air Districts that are subject to this action were designated nonattainment for the 2008 8-hour ozone NAAQS on April 30, 2012, using years 2009–2011 ambient air quality data.[2] At the time of designation, the SCAQMD was classified as an Extreme ozone nonattainment area for the South Coast Air Basin and a Severe ozone nonattainment area for the Coachella Valley Air Basin. The SJVAPCD was classified as an Extreme ozone nonattainment area, and the YSAQMD was classified as a Severe ozone nonattainment area.

On March 6, 2015, EPA issued a final rule entitled, ''Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements'' (SIP Requirements Rule), which establishes the requirements and deadlines that state, tribal, and local air quality management agencies must meet as they develop implementation plans for areas where ozone concentrations exceed the 2008 8-hour ozone NAAQS.[3] Based on the initial nonattainment designations for the 2008 8-hour ozone standard, each District was required to make a SIP revision addressing nonattainment new source review no later than July 20, 2015.[4] This requirement may be met by submitting a SIP revision consisting of a new or revised NNSR permit program, or an analysis demonstrating that the existing SIP-approved NNSR permit program meets the applicable 2008 ozone requirements and a letter certifying the analysis.

On February 3, 2017, EPA issued a final rule entitled, ''Findings of Failure to Submit State Implementation Plan Submittals for the 2008 Ozone National Ambient Air Quality Standards (NAAQS)'' (FFS Rule). The rule found that certain state and local air agencies, including the SCAQMD, SJVAPCD and YSAQMD, had failed to submit a SIP revision in a timely manner to satisfy specific New Source Review requirements that apply to nonattainment areas. The rule established certain deadlines for the imposition of sanctions, if a state does not submit a timely SIP revision addressing the requirements for which the finding was made, and for the EPA to promulgate a Federal Implementation Plan (FIP) to address any outstanding SIP requirements.

II. The State's Submittal

A. What did the State submit?

Table 1 lists the dates the submitted 2008 Ozone Certification letters addressed by this proposal were adopted by each air District and submitted by the California Air Resources Board (CARB), the agency that serves as the governor's designee for California SIP submittals.

TABLE 1—SUBMITTED CERTIFICATION LETTERS

District	Adoption date	Submittal date
South Coast AQMD	7/7/2017	11/16/17
San Joaquin Valley APCD	4/19/18	6/19/18
Yolo-Solano AQMD	3/14/18	6/19/18

On July 31, 2018, CARB's November 16, 2017 submittal of SCAQMD's 2008 Certification letter was deemed to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review. On July 18, 2018, CARB's June 19, 2018 submittal of SJVAPCD's and YSAQMD's 2008 Certification letters were also deemed to meet the completeness criteria in 40 CFR part 51, appendix V.

B. What is the purpose of the submitted certification letters?

The submittal from each District is intended to satisfy the SIP Requirement Rule that requires states to make a SIP revision addressing nonattainment new source review and the FFS Rule that requires each District to make a SIP submittal by September 6, 2018. The SIP for each District currently contains approved NNSR permit programs based on their nonattainment classification for the 1997 8-hour ozone NAAQS. The submitted certification letters provide a mechanism for each District to satisfy the 40 CFR 51.1114 submittal requirements based on their 2008 8-hr ozone nonattainment designations. EPA's analysis of how these SIP revisions address the NNSR requirements for the 2008 8-hour ozone NAAQS is provided below.

III. Analysis of Nonattainment New Source Review Requirements

The minimum SIP requirements for NNSR permitting programs for the 2008 8-hour ozone NAAQS are contained in 40 CFR 51.165. These NNSR program requirements include those promulgated in the ''Phase 2 Rule'' implementing the 1997 8-hour ozone NAAQS[5] and the SIP Requirements Rule implementing the 2008 8-hour ozone NAAQS. Under the Phase 2 Rule, the SIP for each ozone nonattainment area must contain NNSR provisions that: (1) Set major source thresholds for nitrogen oxides (NO_X) and volatile organic compounds (VOC) pursuant to 40 CFR 51.165(a)(1)(iv)(A)(*1*)(*i*)–(*iv*) and (*2*); (2) classify physical changes at a major

[1] 73 FR 16436 (March 27, 2008).

[2] 77 FR 30088 (May 21, 2012).

[3] 80 FR 12263 (March 6, 2015). The SIP Requirements Rule addresses a range of nonattainment area SIP requirements for the 2008 ozone NAAQS, including requirements pertaining to attainment demonstrations, reasonable further progress (RFP), reasonably available control technology, reasonably available control measures, major new source review, emission inventories, and the timing of SIP submissions and of compliance with emission control measures in the SIP. The rule also revokes the 1997 ozone NAAQS and establishes anti-backsliding requirements.

[4] 40 CFR 51.1114.

[5] 70 FR 71612 (November 29, 2005).

source if the change would constitute a major source by itself pursuant to 40 CFR 51.165(a)(1)(iv)(A)(*3*); (3) consider any significant net emissions increase of NO_X as a significant net emissions increase for ozone pursuant to 40 CFR 51.165(a)(1)(v)(E); (4) consider any increase of VOC emissions in extreme ozone nonattainment areas as significant net emissions increases and major modifications for ozone pursuant to 40 CFR 51.165(a)(1)(v)(F); (5) set significant emissions rates for VOC and NO_X as ozone precursors pursuant to 40 CFR 51.165(a)(1)(x)(A)–(C) and (E); (6) contain provisions for emissions reductions credits pursuant to 40 CFR 51.165(a)(3)(ii)(C)(*1*)–(*2*); (7) provide that the requirements applicable to VOC also apply to NO_X pursuant to 40 CFR 51.165(a)(8); and (8) set offset ratios for VOC and NO_X pursuant to 40 CFR 51.165(a)(9)(ii)–(iv). Under the SIP Requirements Rule the SIP for each ozone nonattainment area designated nonattainment for the 2008 8-hour ozone NAAQS and designated nonattainment for the 1997 ozone NAAQS as of April 6, 2015, must also contain NNSR provisions that include the anti-backsliding requirements at 40 CFR 51.1105.

A. South Coast Air Quality Management District (SCAQMD)

The SCAQMD's longstanding SIP-approved NNSR program,[6] established in Regulation XIII—*New Source Review,* of the SCAQMD's Rules and Regulations, applies to the construction and modification of stationary sources, including major stationary sources in nonattainment areas under its jurisdiction. The SCAQMD's submitted SIP revision includes a demonstration, consisting of a table listing each of the Phase 2 Rule and SIP Requirements Rule NNSR program requirements and a citation to the specific provision of the rule satisfying the requirement. The submittal also includes a certification by the SCAQMD that the cited rules meet the federal NNSR requirements for the applicable ozone nonattainment designations. These documents are available in the docket for this action. EPA has reviewed the demonstration and cited program elements intended to meet the federal NNSR requirements and is proposing to approve the SCAQMD's submittal because the current SIP-approved NSR program contains all the Phase 2 Rule and SIP Requirements Rule NNSR program requirements applicable to the South Coast Air Basin as an Extreme ozone nonattainment area, and all the requirements applicable to the Coachella Valley Air Basin as a Severe ozone nonattainment area.

B. San Joaquin Valley Air Pollution Control District (SJVAPCD)

The SJVAPCD's longstanding SIP-approved NNSR program,[7] established in Rule 2201—*New and Modified Stationary Source Review Rule,* applies to the construction and modification of stationary sources, including major stationary sources in nonattainment areas under its jurisdiction. The SJVAPCD's submitted SIP revision includes a demonstration, consisting of a table listing each of the Phase 2 Rule and SIP Requirements Rule NNSR program requirements and a citation to the specific provision of the rule satisfying the requirement. The submittal also includes a certification by the SJVAPCD that the cited rules meet the federal NNSR requirements for the applicable ozone nonattainment designations. These documents are available in the docket for this action. EPA has reviewed the demonstration and cited program elements intended to meet the federal NNSR requirements and is proposing to approve the SJVAPCD's submittal because the current SIP-approved NSR program contains all the Phase 2 Rule and SIP Requirements Rule NNSR program requirements applicable to an Extreme ozone nonattainment area.

C. Yolo-Solano Air Quality Management District (YSAQMD)

The YSAQMD's longstanding SIP-approved NNSR program,[8] established in Rule 3.4—*New Source Review,* applies to the construction and modification of stationary sources, including major stationary sources in nonattainment areas under its jurisdiction. The YSAQMD's submitted SIP revision includes a demonstration, consisting of a table listing each of the Phase 2 Rule and SIP Requirements Rule NNSR program requirements and a citation to the specific provision of the rule satisfying the requirement. The submittal also includes a certification by the YSAQMD that the cited rules meet the federal NNSR requirements for the applicable ozone nonattainment designations. These documents are available in the docket for this action. EPA has reviewed the demonstration and cited program elements intended to meet the federal NNSR requirements and is proposing to approve the YSAQMD's submittal because the current SIP-approved NSR program contains all the Phase 2 Rule and SIP Requirements Rule NNSR program requirements for a Severe ozone nonattainment area.

IV. Proposed Action and Public Comment

EPA is proposing to approve SIP revisions addressing the NNSR requirements for the 2008 8-hour ozone NAAQS for the SCAQMD, SJVAPCD and YSAQMD. In support of this proposed action, we have concluded that our approval of the submitted 2008 Ozone certifications for each District would comply with section 110(l) of the Act because the submittals will not interfere with continued attainment of the NAAQS in each District. EPA has concluded that the State's submission fulfills the 40 CFR 51.1114 revision requirement and meets the requirements of CAA section 110 and the minimum SIP requirements of 40 CFR 51.165. The intended effect of our proposed action is to approve the submitted certifications as meeting the applicable Phase 2 Rule requirements. If we finalize this action as proposed, our action would incorporate these certifications into the federally enforceable SIP and be codified through revisions to 40 CFR 52.220 (Identification of plan).

We will accept comments from the public on this proposal until September 19, 2018.

In addition, the FFS Rule issued by EPA on February 3, 2017 started an 18-month sanctions clock and a 24-month Federal Implementation Plan (FIP) clock. *See* 82 FR 9158. The 18-month sanctions clock was stopped upon receipt of California's SIP revisions and our determination that the submittals were complete. We determined the submittals were complete on July 18, 2018, for the SJVAPCD and YSAQMD, and on July 31, 2018, for the SCAQMD. The 24-month FIP clock will stop upon the effective date of our final approval.

V. Incorporation by Reference

In this document, the EPA is proposing to include in a final EPA rule, regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the certifications listed in Table 1 of this preamble. The EPA has made, and will continue to make, these materials available electronically through *www.regulations.gov* and in hard copy at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

[6] 61 FR 64291 (December 4, 1996); 64 FR 13514, (March 19, 1999); 71 FR 35157 (June 19, 2006).

[7] 79 FR 55637 (September 14, 2014).

[8] 62 FR 36214 (July 7, 1997).

VI. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).
- In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

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

Dated: August 8, 2018.

Deborah Jordan,

Acting Regional Administrator, Region IX.

[FR Doc. 2018–17835 Filed 8–17–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2013–0290; FRL–9982–43–OAR]

RIN 2060–AT25

National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes amendments to the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Clay Ceramics Manufacturing. The proposed amendments are in response to a petition for reconsideration filed by industry stakeholders on the final rule promulgated on October 26, 2015, as well as our review of the 2015 rule with respect to other issues raised by stakeholders. This action proposes to revise the temperature monitoring methodology used to demonstrate continuous compliance with the dioxin/furan (D/F) emissions limit of the final rule. In addition, we are proposing to address concerns raised by industry stakeholders regarding visible emissions (VE) monitoring of tunnel kiln stacks for continuous compliance with particulate matter (PM) and mercury (Hg) emission limitations. This action also proposes to amend the requirements for weekly visual inspections of system ductwork and control device equipment for water curtain spray booths. Lastly, this action proposes to amend the NESHAP to include provisions for emissions averaging and make technical corrections.

DATES:

Comments. Comments must be received on or before October 4, 2018.

Public hearing. If anyone contacts us requesting a public hearing on or before August 27, 2018, we will hold a hearing. Additional information about the hearing, if requested, will be published in a subsequent **Federal Register** document and posted at *https://www.epa.gov/stationary-sources-air-pollution/brick-and-structural-clay-products-national-emission-standards.* See **SUPPLEMENTARY INFORMATION** for information on registering and attending a public hearing.

ADDRESSES:

Comments. Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2013–0290, at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. See **SUPPLEMENTARY INFORMATION** for detail about how the EPA treats submitted comments. *Regulations.gov* is our preferred method of receiving comments. However, the following other submission methods are also accepted:

- *Email: a-and-r-docket@epa.gov.* Include Docket ID No. EPA–HQ–OAR–2013–0290 in the subject line of the message.
- *Fax:* (202) 566–9744. Attention Docket ID No. EPA–HQ–OAR–2013–0290.
- *Mail:* To ship or send mail via the United States Postal Service, use the following address: U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA–HQ–OAR–2013–0290, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand/Courier Delivery:* Use the following Docket Center address if you are using express mail, commercial delivery, hand delivery, or courier: EPA Docket Center, EPA WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. Delivery verification signatures will be available only during regular business hours.

FOR FURTHER INFORMATION CONTACT: For questions about this proposed action, contact Mr. Brian Storey, Sector Policies and Programs Division (D243–03), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–1103; fax number: (919) 541–4991; and email address: *storey.brian@epa.gov.*

SUPPLEMENTARY INFORMATION:

Public hearing. Please contact Ms. Aimee St. Clair at (919) 541–1063 or by

email at *stclair.aimee@epa.gov* to request a public hearing, to register to speak at the public hearing, or to inquire as to whether a public hearing will be held.

Docket. The EPA has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2013–0290. All documents in the docket are listed in *Regulations.gov.* Although listed, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *Regulations.gov* or in hard copy at the EPA Docket Center, Room 3334, EPA WJC West Building, 1301 Constitution Avenue NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

Instructions. Direct your comments to Docket ID No. EPA–HQ–OAR–2013–0290. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *https://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be CBI or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *https://www.regulations.gov* or email. This type of information should be submitted by mail as discussed below.

The EPA may publish any comment received to its public docket. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the Web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

The *https://www.regulations.gov* website allows you to submit your comment anonymously, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *https://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any digital storage media you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should not include special characters or any form of encryption and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *https://www.epa.gov/dockets.*

Submitting CBI. Do not submit information containing CBI to the EPA through *https://www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on any digital storage media that you mail to the EPA, mark the outside of the digital storage media as CBI and then identify electronically within the digital storage media the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI directly to the public docket through the procedures outlined in *Instructions* above. If you submit any digital storage media that does not contain CBI, mark the outside of the digital storage media clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2. Send or deliver information identified as CBI only to the following address: OAQPS Document Control Officer (C404–02), OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA–HQ–OAR–2013–0290.

Preamble Acronyms and Abbreviations. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

BSCP Brick and Structural Clay Products
CAA Clean Air Act
CBI Confidential Business Information
CFR Code of Federal Regulations
D/F dioxins/furans
EPA U.S. Environmental Protection Agency
HAP hazardous air pollutant(s)
Hg mercury
HON Hazardous Organic NESHAP
lb pounds
NAICS North American Industry Classification System
NESHAP national emission standards for hazardous air pollutants
NTTAA National Technology Transfer and Advancement Act
OAQPS Office of Air Quality Planning and Standards
OMB Office of Management and Budget
PM particulate matter
PRA Paperwork Reduction Act
RFA Regulatory Flexibility Act
UMRA Unfunded Mandates Reform Act
VE visible emissions

Organization of this document. The information in this preamble is organized as follows:

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D. Regulatory Flexibility Act (RFA)
E. Unfunded Mandates Reform Act (UMRA)
F. Executive Order 13132: Federalism
G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

J. National Technology Transfer and Advancement Act (NTTAA)
K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

I. General Information

A. Does this action apply to me?

Table 1 of this preamble lists the NESHAP and associated regulated industrial source categories that are the subject of this proposal. Table 1 is not intended to be exhaustive, but rather provides a guide for readers regarding the entities that this proposed action is likely to affect. The proposed amendments, once promulgated, will be directly applicable to the affected sources. Federal, state, local, and tribal government entities would not be affected by this proposed action. As defined in the *Initial List of Categories of Sources Under Section 112(c)(1) of the Clean Air Act Amendments of 1990* (see 57 FR 31576, July 16, 1992) and *Documentation for Developing the Initial Source Category List* (see EPA–450/3–91–030), the Clay Products Manufacturing source category, as originally listed, included any facility engaged in manufacturing of clay products such as brick, vitrified clay pipe, structural clay tile, and clay refractories. The Clay Products Manufacturing source category has since been replaced by the Brick and Structural Clay Products (BSCP) Manufacturing source category and the Clay Ceramics Manufacturing source category (see 67 FR 47894, July 22, 2002).

TABLE 1—NESHAP AND INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS ACTION

Category	NAICS code [1]	Examples of potentially regulated entities
Industry	327120	Ceramic wall and floor tile manufacturing facilities (Clay Ceramics Manufacturing NESHAP).
	327110	Vitreous plumbing fixtures (sanitaryware) manufacturing facilities (Clay Ceramics Manufacturing NESHAP).
Federal government		Not affected.
State/local/tribal government		Not affected.

[1] North American Industry Classification System

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this action is available on the internet. Following signature by the EPA Administrator, the EPA will post a copy of this proposed action at *https://www.epa.gov/stationary-sources-air-pollution/brick-and-structural-clay-products-national-emission-standards.* Following publication in the **Federal Register**, the EPA will post the **Federal Register** version of the proposal and key technical documents at this same website.

A redline version of the regulatory language that incorporates the proposed changes in this action is available in the docket for this action (Docket ID No. EPA–HQ–OAR–2013–0290).

II. Background

A. What is the statutory authority for this action?

The statutory authority for this action is provided by sections 112 and 307(d)(7)(B) of the Clean Air Act (CAA) as amended (42 U.S.C. 7412 and 7607(d)(7)(B)).

B. What actions preceded these proposed amendments?

The initial NESHAP for Clay Ceramics Manufacturing was published in the **Federal Register** on May 16, 2003 (68 FR 26690), and codified at 40 CFR part 63, subpart KKKKK, pursuant to section 112 of the CAA. These standards were challenged and subsequently vacated by the United States Court of Appeals for the District of Columbia Circuit in 2007. See *Sierra Club* v. *EPA,* 479 F.3d 875, 876 (D.C. Cir. 2007). Following the 2007 vacatur of the 2003 rule, the EPA collected additional data and information to support new standards for the clay ceramics industry. This information is contained in the docket at *https://www.regulations.gov* (see Docket ID No. EPA–HQ–OAR–2013–0290). On December 18, 2014, the EPA proposed new NESHAP for Clay Ceramics Manufacturing (79 FR 75622). The EPA received additional data and comments during the public comment period. These data and comments were considered and analyzed and, where appropriate, revisions to the NESHAP were made. The NESHAP for Clay Ceramics Manufacturing was finalized on October 26, 2015 (80 FR 65470).

On December 23, 2015, Kohler Company (Kohler) petitioned the EPA for reconsideration of the final rule for Clay Ceramics Manufacturing (Docket Item No. EPA–HQ–OAR–2013–0290–0316). In this action, we are proposing revisions to the Clay Ceramics Manufacturing NESHAP based on information provided by Kohler in their petition, information collected by the EPA subsequent to the reconsideration request, and information collected by the EPA subsequent to our reconsideration request response. The intent of these proposed amendments is to provide some flexibility to the clay ceramics manufacturing industry, while maintaining the emissions and operational standards of the NESHAP.

III. Summary of the Proposed Amendments

The EPA is proposing the following amendments to 40 CFR part 63, subpart KKKKK, in response to Kohler's petition for reconsideration on the October 26, 2016, final rule (80 FR 65470):

- Revise the temperature monitoring methodology used to demonstrate continuous compliance with the D/F emissions limits from sanitaryware first-fire tunnel kilns.
- Provide an alternative to the monitoring provisions for VE from tunnel kiln exhaust stacks.
- Amend the requirements for weekly visual inspections of system ductwork and control device equipment for water curtain spray booths.
- Define cooling stacks in the rule and differentiate cooling stacks from kiln exhaust stacks for compliance purposes.
- Include provisions to allow emissions averaging for emissions from existing tunnel kilns and glaze spray booths and make associated revisions to the definition of affected source and recordkeeping and reporting requirements.

The rationale for these proposed amendments is provided in section IV of this preamble. This action is limited to the specific issues raised in the petition for reconsideration, plus some minor technical corrections. There are no changes to emission limits in the

October 2015 final rule as a result of these proposed amendments.

IV. Rationale for the Proposed Amendments

A. Temperature Monitoring of Tunnel Kilns

The December 18, 2014, action proposed to require continuous monitoring of kiln temperature as a performance parameter for demonstrating compliance with the D/F emission limitations. In their public comments, Kohler indicated that the proposed temperature limitation failed to account for the normal temperature variations that occur during operation of a kiln. The October 26, 2015, final rule changed the performance parameter from a minimum kiln temperature operating limit to a maximum stack temperature operating limit. In our response to Kohler's December 23, 2015, petition for reconsideration, we indicated that we would grant reconsideration of the temperature monitoring requirement (Docket Item No. EPA–HQ–OAR–2013–0290–0319).

Subsequently, the EPA reviewed new data provided by Kohler regarding annual kiln operating temperatures (see Docket Item No. EPA–HQ–OAR–2013–0290–0340). The data indicate that there is variability in kiln operating temperatures based on kiln load and other factors. During production of sanitaryware products, the tunnel kiln operating temperature is used as the primary operating parameter to maximize quality assurance of the product (minimal defects), while minimizing fuel usage. In addition, there are periods, based on the number of products being run through the kiln (kiln load), and the variation of types of products included in each load, where the temperature set point must be adjusted to control the ''heat work'' through the kiln. Heat work is defined as the temperature and time factors that allow the sanitaryware body and glaze coatings to sinter, melt, flow, and fuse. The adsorption rate of the fired product (porosity) is determined by the heat work (see Docket Item No. EPA–HQ–OAR–2013–0290–0342).

Based on this information gathered during our discussions with Kohler, we are proposing to amend the compliance demonstration requirements for sanitaryware first-fire tunnel kilns where no air pollution control devices are installed. In this scenario, we propose to require the affected sources to monitor kiln temperature during an initial D/F compliance test, consisting of three 4-hour test runs, for a total of 12 hours. From this 12-hour block of time, consisting of 1-hour increments, the affected sources would calculate two values: (1) The standard deviation of the 12 1-hour temperature measurements, and (2) 1 percent of the 12-hour block average. The affected sources would determine which of the two values would provide the greatest variability (*i.e.,* the highest value) and would then *add* this value to the 12-hour block average measured during the compliance test. This value would become the *maximum* temperature at which the kiln would be allowed to operate during normal operations. We are setting a maximum operating limit because, due to variability, kiln operating temperatures at sanitaryware facilities sometimes fall below the value observed during the compliance test. Temperatures have also been found to fall in the duct.

Under this scenario, the affected sources would be required to monitor 12-hour averages of their kiln during normal operations and demonstrate compliance by comparing these 12-hour averages to the value calculated during the D/F compliance test. This should allow variability of the hourly temperature fluctuations as a 12-hour block average and, additionally, provide variability by having multiple options for calculating the kiln variability into the operating limit.

In this proposed amendment to the rule, owners or operators would be required to maintain records of performance tests and continuous compliance data as is required in the October 2015 final rule and would be required to comply with the corresponding reporting requirements of the October 2015 final rule. Accordingly, in this action, the EPA is proposing to amend Table 2 to 40 CFR part 63, subpart KKKKK, to include the revised operating limit, amend Table 4 to specify the requirements for establishing the operating limit during the D/F compliance test, and amend Tables 6 and 7 to specify the associated initial and continuous compliance requirements, respectively. These amendments to the rule only apply to sanitaryware first-fire tunnel kilns. The D/F compliance requirements of all other emission sources regulated by the rule remain unchanged.

We are also requesting comment on whether to consider an alternative temperature monitoring requirement. Similar to the previous scenario, the affected sources would monitor kiln temperature during the initial D/F compliance test, calculate both the standard deviation of the 12 1-hour temperature measurements and 1 percent of the 12-hour block average, and decide which of the two values would provide the greatest variability (*i.e.,* the highest value). However, this second scenario has the affected sources *subtract* this value from the 12-hour block average measured during the compliance test to determine the *minimum* temperature at which the kiln would be allowed to operate during normal operations. Similar to the previous scenario, this alternative would require the affected sources to monitor 12-hour averages of their kiln during normal operations and demonstrate compliance by comparing these 12-hour averages to the value calculated during the D/F compliance test.

The proposed amendments do not change the requirement for affected facilities operating sanitaryware first-fire tunnel kilns to demonstrate compliance with the D/F emission limit through repeat 5-year stack testing. The proposed amendments to the rule provide affected facilities without air pollution control devices with a revised means to demonstrate continuous compliance at all times, including those times where facilities must adjust kiln temperatures to control the heat work through the kiln. If an affected facility determines through continuous kiln temperature monitoring that they cannot demonstrate compliance using the method proposed, they would be required to maintain kiln temperatures that demonstrate compliance until such time that additional stack testing could be performed and a new temperature threshold determined.

B. Visible Emissions Monitoring of Tunnel Kiln Exhaust

In its petition for reconsideration, Kohler explained the basis for its position that VE monitoring is not a useful parameter to assess kiln operations. In addition, Kohler explained that process errors that would potentially lead to an increase in VE from a kiln would more readily be identified through one of multiple parameters monitored continuously by the kiln operator. In our response to this request, we indicated that, although we were denying the reconsideration request on this issue, we would evaluate any additional information provided by Kohler and determine whether any further action would be warranted (see Docket Item No. EPA–HQ–OAR–2013–0290–0319).

In a subsequent meeting, the EPA and Kohler discussed alternatives to the VE testing requirement in the final rule. The information provided by Kohler (see Docket Item No. EPA–HQ–OAR–2013–0290–0339) supports the

conclusion that monitoring kiln temperature is a more accurate and sensitive parameter in determining times when the PM emissions may be increased, rather than periodically monitoring VE from the kiln stack. As a result, the EPA is proposing to include an alternative that would require the source to first take the necessary steps to maintain the temperature profile of each tunnel kiln. For any incidence where a kiln exceeds its normal operating temperature profile, the source would then be required to perform VE observations at the stack of the affected kiln according to the procedures of EPA Method 22. Accordingly, in this action, the EPA is proposing to amend 40 CFR 63.8620(e) to include revised procedures for demonstrating continuous compliance to include the requirement for facilities to maintain normal kiln temperature, and only perform VE observations when the kiln temperatures are sporadic or out of the normal range of operation. Additionally, the EPA is proposing to amend Tables 2 and 7 to 40 CFR part 63, subpart KKKKK, to specify the operating limits and continuous compliance requirements, respectively.

C. Weekly Visual Inspections of Water Curtain Spray Booths

Regarding the issue of visual inspections for system ductwork and control device equipment for water curtain spray booths, Kohler and the EPA have discussed the weekly inspection requirement. Kohler representatives explained that current maintenance procedures eliminate the need for the weekly inspections. Kohler's operators routinely conduct preventative maintenance on the water curtain control, such as regular periodic fan maintenance, as well as a weekly wash-out. They also explained how their current procedures ensure that they become aware in a relatively short period of time if there is an issue with the water curtain or the ductwork, as they can see if particulates or other impurities are getting into the glaze that has been sprayed onto a piece of ware. If this were to occur, the operator would stop the glazing operations to fix the issue. Kohler provided the EPA additional information about the quarterly preventative maintenance that they conduct, available in Docket Item No. EPA–HQ–OAR–2013–0290–0331. Kohler also indicated that ductwork inspections do not have any value, since the water is the control, and, therefore, any air in the ductwork is already controlled (see Docket Item No. EPA–HQ–OAR–2013–0290–0336).

During several visits to the Kohler facility in Spartanburg, South Carolina (see Docket Item Nos. EPA–HQ–OAR–2013–0290–0005, 0331, and 0341), the EPA observed the configuration of a typical spray booth, and the ductwork associated with the booth. From the observations, it was apparent that the booth operator would indeed be able to see if particulates or other impurities were getting into the glaze that has been sprayed onto a piece of ware, and that the requirement for weekly inspections would not be required based on the configuration of the booth.

Based on its evaluation of the additional data, and after observing the water curtain spray booth operations at the Kohler facility in Spartanburg, South Carolina, the EPA is proposing to remove the weekly visual inspection requirement from the rule but retain the other two monitoring requirements (daily inspections to verify the presence of water flow to the wet control system and annual inspections of the interior of the control equipment). Accordingly, in this action, the EPA is proposing to amend Table 2 to 40 CFR part 63, subpart KKKKK, to remove the weekly visual inspections part of the operating limit for glaze spray operations equipped with a water curtain and amend Table 7 to remove the associated continuous compliance requirement.

D. Cooling Stacks

In its response to Kohler's petition that cooling stacks to be tested at sanitaryware manufacturing facilities should be limited to those with an oxygen content at or below 20.4 percent, the EPA noted that the value of 20.5 percent that the EPA finalized was based on the 20.5 percent threshold concentration provided by Kohler in an email to the EPA clarifying its testing proposal, and this email was present in the docket at proposal (see Docket Item No. EPA–HQ–OAR–2013–0290–0119). At the time, the EPA concluded that a reconsideration on this issue was not warranted pursuant to CAA section 307(d)(7)(B) and denied the reconsideration petition on this issue. Notwithstanding this denial, the EPA stated that it would evaluate any additional information provided by the petitioner and determine whether any further action is warranted (see Docket Item No. EPA–HQ–OAR–2013–0290–0319).

In a subsequent meeting, Kohler and the EPA discussed Kohler's request to revise this aspect of the rule and options for any such revision, which included changing the oxygen content in the Clay Ceramics Manufacturing NESHAP from 20.5 percent to 20.4 percent or adding a definition for ''cooling stack'' that would exclude it from applicability (see Docket Item No. EPA–HQ–OAR–2013–0290–0331). As a result of this and later contacts (see Docket Item Nos. EPA–HQ–OAR–2013–0290–0335 through 0338), the EPA has a better understanding of the purpose and operations of the cooling stacks. Based on this additional knowledge, the EPA is proposing to revise 40 CFR 63.8595(c) to specifically exclude cooling stacks from stack testing at sanitaryware manufacturing facilities, revise 40 CFR 63.8665 to include a definition for ''cooling stack'' and, for additional clarity, include a definition for ''products of combustion (POC) stack,'' which is the type of stack that would be tested.

E. Emissions Averaging

In its petition for reconsideration, Kohler requested that the EPA allow the use of emissions averaging as a compliance option in the Clay Ceramics Manufacturing NESHAP for existing tunnel kilns and glaze spray booths. Initially, in the December 18, 2014, proposed rule (79 FR 75649), the EPA had requested public comment on the use of emissions averaging in the BSCP Manufacturing NESHAP. In that 2014 proposal, we also noted that emissions averaging would not be applicable to new sources and could only be used between existing tunnel kilns in the same size subcategory (79 FR 75649). In this action, we are proposing amendments to 40 CFR 63.8595 in the Clay Ceramics Manufacturing NESHAP that would include alternative emissions averaging limits for the following:

- PM and Hg, in units of pounds per ton (lb/ton) of fired product for existing floor tile roller kilns;
- PM and Hg, in units of lb/ton of fired product for existing wall tile roller kilns;
- PM and Hg, in units of lb/ton of greenware fired for existing first-fired sanitaryware tunnel kilns;
- PM and Hg, in units of lb/ton of first-fired glaze sprayed (dry weight basis) for existing tile glaze lines with glaze spraying; and
- PM, in units of lb/ton of first-fire glaze sprayed (dry weight basis), for existing sanitaryware manual, spray machine, or robot glaze applications.

As stated in the December 18, 2014, proposed rule, the EPA has concluded that it is permissible under the appropriate circumstances to establish within a NESHAP a unified compliance regimen that permits averaging within an affected source across individual affected units subject to the standard

under certain conditions (79 FR 75650). In addition, averaging across affected units is permitted only if it can be demonstrated that the total quantity of any hazardous air pollutant (HAP) will not be greater under the averaging mechanism than it could be if each individual affected unit complied separately with the applicable standard. The conditions required for emissions averaging include: (1) No averaging between different types of pollutants; (2) no averaging between sources that are not part of the same affected source; (3) no averaging between individual sources within a single major source if the individual sources are not subject to the same NESHAP; and (4) no averaging between existing sources and new sources.

In this action, we are proposing that emissions averaging would be allowed if they meet the following requirements. First, emissions averaging would only be permitted between individual sources at a single existing affected source and would only be permitted between individual sources subject to the Clay Ceramics Manufacturing NESHAP. Further, emissions averaging would not be permitted between two or more different affected sources or between two or more sources in different subcategories. Finally, new sources could not use emissions averaging. In addition, we are proposing that any emissions averaging alternative would require each facility that intends to use emissions averaging to submit an emissions averaging plan, which will provide additional assurance that the necessary criteria will be followed. In such an emissions averaging plan, the facility would include the identification of: (1) All units in the averaging group, (2) the control technology installed, (3) the process parameter that will be monitored, (4) the specific control technology or pollution prevention measure to be used, (5) the test plan for the measurement of the HAP being averaged, and (6) the operating parameters to be monitored for each control device.

Under the proposed emissions averaging provision, the emissions for each unit in the averaging group would be capped at the emission level being achieved on the effective date of the final rule. The caps ensure that emissions do not increase above the emission levels that sources currently are designed, operated, and maintained to achieve. In the absence of performance tests, in documenting these caps, the affected sources would document the type, design, and operating specification of control devices installed on the effective date of the final rule to ensure that existing controls are not removed or operated less efficiently. The proposed emissions averaging provision would not apply to individual units if the unit shares a common stack with units in other subcategories, because, in that circumstance, it is not possible to distinguish the emissions from each individual unit.

For those cases where the emissions averaging provisions are used, the EPA is proposing to add a definition for ''emissions averaging sources'' in 40 CFR 63.8665 that includes those existing sources included in the emissions average. The EPA is also proposing to amend Table 1 to 40 CFR part 63, subpart KKKKK, to include the applicable emission limits determined under the emissions averaging provisions. In addition, the EPA is proposing to revise the reporting and recordkeeping provisions in 40 CFR 63.8630, 63.8635, and 63.8640 to include the following requirements where the emissions averaging provisions are used: (1) Certifying in the notification of compliance status that the emissions level achieved or the control technology employed is no less stringent than the level or control technology contained in the notification; (2) reporting in the compliance report the emissions level that was being achieved or the control technology employed on the effective date of the rule; and (3) keeping a copy of the emissions averaging implementation plan, all required calculations, including monthly records of process rate, as applicable, and monitoring records.

The emissions averaging provisions that we are proposing are based in part on the emissions averaging provisions in the Hazardous Organic NESHAP (HON). The legal basis and rationale for the HON emissions averaging provisions were provided in the preamble to the final HON (59 FR 19425, April 22, 1994).

F. Technical Corrections

Technical corrections are being proposed to correct inaccuracies that were promulgated in the final rule, replace text that might be considered confusing, and correct outdated information. We are soliciting comment only on whether the proposed changes provide the intended accuracy, clarity, and consistency. These proposed changes are described in Table 2 of this preamble and shown in the proposed regulatory text below. We request comment on all of these proposed changes.

TABLE 2—PROPOSED TECHNICAL CORRECTIONS TO 40 CFR PART 63, SUBPART KKKKK

Table to subpart KKKKK	Description of proposed correction
40 CFR 63.8635(g)(1)	Update the addresses for EPA websites.
Table 2, item 3	To avoid confusion, revise the description of the operating limit for carbon flow rate.
Table 2, items 10 and 11	Revise the block period for average operating temperature for spray dryers and floor tile press dryers from 3-hour to 4-hour to align with the test run length for EPA Method 23.
Table 4, item 8	In the measurement of carbon flow rate date, include data from the Hg and D/F performance test data for tunnel or roller kilns equipped with an activated carbon injection system.
Table 4, items 11 and 12	Revise the block average for operating temperature for spray dryers and floor tile press dryers from 3-hour to 4-hour to align with the test run length for EPA Method 23.
Table 6, items 2.a.ii, 2.b.ii, 2.c.ii, 3.a.ii, 3.b.ii, 3.c.ii, 4.a.ii, 4.b.ii, 4.c.ii, 5.a.ii, 5.b.ii, 6.a.ii, 7.a.ii, 8.a.ii, 9.a.ii, 10.a.ii, 11.a.ii, 12.a.ii, 12.b.ii, 12.c.ii, 13.a.ii, 13.b.ii, 13.c.ii, 14.a.ii, 14.b.ii, 14.c.ii, 15.a.ii, 15.b.ii, 16.a.ii, 17.a.ii, 18.a.ii, 19.a.ii, 20.a.ii, and 21.a.ii.	To avoid confusion, remove mention of the specific block period and simply refer to ''the period of the initial performance test.''
Table 7, items 10 and 11	Revise the block average for operating temperature for spray dryers and floor tile press dryers from 3-hour to 4-hour to align with the test run length for EPA Method 23.

V. Summary of Cost, Environmental, and Economic Impacts

This action will have no cost, environmental, energy, or economic impacts beyond those impacts presented in the October 26, 2015, final rule for Clay Ceramics Manufacturing and may result in a cost savings due to the changes in monitoring and testing requirements discussed in the previous section. The technical corrections are cost neutral.

VI. Statutory and Executive Order Reviews

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

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

This action is not a significant regulatory action and was, therefore, not submitted to the Office of Management and Budget (OMB) for review.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is considered an Executive Order 13771 deregulatory action. The proposed rule is expected to provide meaningful burden reduction by deregulating aspects of the sanitaryware manufacturing process, but do not result in changes in costs to comply.

C. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. Burden is defined at 5 CFR 1320.3(b). OMB has previously approved the information collection activities contained in the existing regulation (40 CFR part 63, subpart KKKKK) and has assigned OMB control number 2060–0513. This action does not change the information collection requirements.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden, or otherwise has a positive economic effect on the small entities subject to the rule. This proposed rule will not impose any additional requirements on small entities, only alternatives to existing requirements. We have, therefore, concluded that this action will have no net regulatory burden for all directly regulated small entities.

E. Unfunded Mandates Reform Act (UMRA)

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

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications as specified in Executive Order 13175. It will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. The proposed amendments impose no requirements on tribal governments. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

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

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

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

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The documentation for this decision is contained in the docket (See ''EJ Screening Report for Clay Ceramics,'' Docket Item No. EPA–HQ–OAR–2013–0290–0241).

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practices and procedures, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: August 8, 2018.

Andrew R. Wheeler,

Acting Administrator.

For the reasons set out in the preamble, 40 CFR part 63 is proposed to be amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart KKKKK—[Amended]

■ 2. Section 63.8595 is amended by:
■ a. Revising paragraph (c);
■ b. Redesignating paragraph (h) as paragraph (i);
■ c. Adding a new paragraph (h); and
■ d. Revising newly redesignated paragraphs (i) introductory text and (i)(1) introductory text.

The revisions and addition read as follows:

§ 63.8595 How do I conduct performance tests and establish operating limits?

* * * * *

(c) Each performance test must be conducted according to the requirements in § 63.7 and under the specific conditions in Table 4 to this subpart. Stacks to be tested at sanitaryware manufacturing facilities shall be limited to products of

combustion (POC) stacks and not include cooling stacks.

* * * * *

(h)(1) As an alternative to meeting the requirements of § 63.8555 for PM or mercury, if you have more than one existing source in any subcategories located at your facility, you may demonstrate compliance by emissions averaging, if your averaged emissions are not more than 90 percent of the applicable emission limit, according to the procedures in this section. You may not include new sources in an emissions average.

(2) For a group of two or more existing sources in the same subcategory that each vent to a separate stack, you may average PM or mercury emissions among existing units to demonstrate compliance with the limits in Table 1 to this subpart as specified in paragraph (h)(2)(i) through (iv) of this section, if you satisfy the requirements in paragraphs (h)(3) and (4) of this section.

(i) You may average across existing sources in the same kiln type and size category (*e.g.,* roller or tunnel kilns, large or small kilns) and the same subcategory (*e.g.,* sanitaryware manual or spray machine or robot glaze application) where applicable;

(ii) You may not include a unit in the emissions average if the unit shares a common stack with units in other subcategories;

(iii) You may not include spray dryers or press dryers in the emissions average; and

(iv) You may not average between different types of pollutants.

(3) The averaged emissions rate from the existing sources participating in the emissions averaging option must not exceed 90 percent of the limits in Table 1 to this subpart at all times the affected units are subject to numeric emission limits following the compliance date specified in § 63.8545.

(4)(i) You must demonstrate initial compliance using the maximum process rate and the results of the initial performance tests.

(ii) You must use Equation 9 to demonstrate that the PM or mercury emissions from all existing units participating in the emissions averaging option for that pollutant do not exceed the emission limits in Table 1 to this subpart.

$$AveWeightedEmissions = 1.1 \times \sum_{i=1}^{n} \left(E_i \times P_{max\ i}\right) \div \sum_{i=1}^{n} P_{max\ i} \qquad \text{(Eq. 9)}$$

Where:

AveWeightedEmissions = Average weighted emissions for PM or mercury, in units of kilograms (pounds) per megagram (ton) of fired product for existing floor tile roller kilns and wall tile roller kilns, greenware fired for existing first-fired sanitaryware tunnel kilns, and first-fire glaze sprayed (dry weight basis) for existing tile glaze lines with glaze spraying and average weighted emissions for PM, in units of kilograms (pounds) per megagram (ton) of first-fire glaze sprayed (dry weight basis) for existing sanitaryware manual, spray machine, or robot glaze applications

E_i = Emission rate (as determined during the initial compliance demonstration) of PM or mercury from unit i, in units of kilograms (pounds) per megagram (ton). Determine the emission rate for PM or mercury by performance testing according to Table 4 to this subpart using the applicable equation in § 63.8595(f)

$P_{max\ i}$ = Maximum process rate for unit i, in units of megagrams (tons)

n = Number of units participating in the emissions averaging option

1.1 = Required discount factor

(5)(i) After the initial compliance demonstration described in paragraph (h)(4) of this section, you must demonstrate compliance on a monthly basis determined at the end of every month (12 times per year) according to paragraph (h)(5)(ii) of this section. The first monthly period begins on the compliance date specified in § 63.8545.

(ii) For each calendar month, you must use Equation 10 of this section to calculate the average weighted emission rate for that month.

$$AveWeightedEmissions = 1.1 \times \sum_{i=1}^{n} \left(E_i \times P_{month\ i}\right) \div \sum_{i=1}^{n} P_{month\ i} \qquad \text{(Eq. 10)}$$

Where:

AveWeightedEmissions = Average weighted emissions for PM or mercury, in units of kilograms (pounds) per megagram (ton) of fired product for existing floor tile roller kilns and wall tile roller kilns, greenware fired for existing first-fired sanitaryware tunnel kilns, and first-fire glaze sprayed (dry weight basis) for existing tile glaze lines with glaze spraying and average weighted emissions for PM, in units of kilograms (pounds) per megagram (ton) of first-fire glaze sprayed (dry weight basis) for existing sanitaryware manual, spray machine, or robot glaze applications, for that calendar month

E_i = Emission rate (as determined during the most recent compliance demonstration) of PM or mercury from unit i, in units of kilograms (pounds) per megagram (ton). Determine the emission rate for PM or mercury by performance testing according to Table 4 to this subpart using the applicable equation in § 63.8595(f)

$P_{month\ i}$ = The process rate for that calendar month for unit i, in units of megagrams (tons)

n = Number of units participating in the emissions averaging option

1.1 = Required discount factor

(6) Until 12 monthly weighted average emission rates have been accumulated, calculate and report only the average weighted emission rate determined under paragraph (h)(5)(ii) of this section for each calendar month. After 12 monthly weighted average emission rates have been accumulated, for each subsequent calendar month, use Equation 11 to calculate the 12-month rolling average of the monthly weighted average emission rates for the current calendar month and the previous 11 calendar months.

$$E_{avg} = \sum_{i=1}^{n} ER_i \div 12 \qquad \text{(Eq. 11)}$$

Where:

E_{avg} = 12-month rolling average emission rate for PM or mercury, in units of kilograms (pounds) per megagram (ton) of fired product for existing floor tile roller kilns and wall tile roller kilns, greenware fired for existing first-fired sanitaryware tunnel kilns, and first-fire glaze sprayed (dry weight basis) for existing tile glaze lines with glaze spraying and average weighted emissions for PM, in units of kilograms (pounds) per megagram (ton) of first-fire glaze sprayed (dry weight basis) for existing sanitaryware manual, spray machine, or robot glaze applications

ER_i = Monthly weighted average, for calendar month ''i,'' in units of kilograms (pounds) per megagram (ton), as calculated by paragraph (h)(5)(ii) of this section

(7) You must develop, and submit upon request to the applicable Administrator for review and approval, an implementation plan for emissions averaging according to the following procedures and requirements in paragraphs (h)(7)(i) through (iv) of this section.

(i) If requested, you must submit the implementation plan no later than 180 days before the date that the facility intends to demonstrate compliance using the emissions averaging option.

(ii) You must include the information contained in paragraphs (h)(7)(ii)(A) through (D) of this section in your implementation plan for all emission sources included in an emissions average:

(A) The identification of all existing sources in the averaging group, including for each either the applicable HAP emissions level or the control technology installed and the date on which you are requesting emissions averaging to commence;

(B) The specific control technology or pollution prevention measure to be used for each source in the averaging group and the date of its installation or application. If the pollution prevention measure reduces or eliminates emissions from multiple sources, the owner or operator must identify each source;

(C) The test plan for the measurement of emissions in accordance with the requirements in § 63.8595;

(D) The operating parameters to be monitored for each control system or device consistent with § 63.8555 and Table 2 to this subpart, and a description of how the operating limits will be determined;

(iii) If submitted upon request, the Administrator shall review and approve or disapprove the plan according to the following criteria:

(A) Whether the content of the plan includes all of the information specified in paragraph (h)(7)(ii) of this section; and

(B) Whether the plan presents sufficient information to determine that compliance will be achieved and maintained.

(iv) The applicable Administrator shall not approve an emissions averaging implementation plan containing any of the following provisions:

(A) Any averaging between emissions of differing pollutants or between differing sources; or

(B) The inclusion of any emission source other than an existing unit in the same subcategories.

(i) For each affected source that is subject to the emission limits specified in Table 1 to this subpart and is equipped with an APCD that is not addressed in Table 2 to this subpart or that is using process changes as a means of meeting the emission limits in Table 1 to this subpart, you must meet the requirements in § 63.8(f) and paragraphs (i)(1) and (2) of this section.

(1) Submit a request for approval of alternative monitoring procedures to the Administrator no later than the notification of intent to conduct a performance test. The request must contain the information specified in paragraphs (i)(1)(i) through (iv) of this section.

* * * * *

■ 3. Section 63.8620 is amended by:

■ a. Redesignating paragraphs (e)(1) through (3) as paragraphs (e)(1)(i) through (iii);

■ b. Redesignating paragraph (e) introductory text as paragraph (e)(1) and revising it; and

■ c. Adding new paragraph (e)(2) and paragraphs (f) and (g).

The revision and additions read as follows:

§ 63.8620 How do I demonstrate continuous compliance with the emission limitations and work practice standards?

* * * * *

(e)(1) *VE testing.* You must demonstrate continuous compliance with the operating limits in Table 2 to this subpart for visible emissions (VE) from tunnel or roller kilns that are uncontrolled or equipped with DIFF, DLS/FF, or other dry control device by monitoring VE at each kiln stack according to the requirements in paragraphs (e)(1)(i) through (iii) of this section.

* * * * *

(2) *Alternative to VE testing.* You must demonstrate continuous compliance with the operating limits in Table 2 to this subpart for kiln temperature profile for tunnel or roller kilns that are uncontrolled or equipped with DIFF, DLS/FF, or other dry control device by maintaining the kiln temperature profile within acceptable parameters and, for any incidence where the kiln is out of control (*i.e.,* exceeds its temperature profile), monitoring VE at each kiln stack according to the requirements in paragraphs (e)(2)(i) through (iii) of this section.

(i) Perform VE observations at the stack of each out-of-control kiln according to the procedures of Method 22 of 40 CFR part 60, appendix A–7. The duration of each Method 22 test must be at least 15 minutes.

(ii) If VE are observed during any test conducted using Method 22 of 40 CFR part 60, appendix A–7, you must promptly initiate and complete corrective actions according to your OM&M plan.

(iii) If VE are observed during any test conducted using Method 22 of 40 CFR part 60, appendix A–7, you must report these deviations by following the requirements in § 63.8635.

(f) Following the compliance date, you must demonstrate compliance with the emissions averaging provision under this subpart on a continuous basis by meeting the requirements of paragraphs (f)(1) and (2) of this section.

(1) For each calendar month, demonstrate compliance with the average weighted emissions limit for the existing units participating in the emissions averaging option as determined in § 63.8595(h)(5) and (6).

(2) For each existing unit participating in the emissions averaging option, you must comply with the continuous compliance requirements in Table 7 to this subpart.

(g) Any instance where you fail to comply with the continuous monitoring requirements in paragraphs (f)(1) and (2) of this section is a deviation.

■ 4. Section 63.8630 is amended by revising paragraph (c) introductory text and adding paragraph (c)(4) to read as follows:

§ 63.8630 What notifications must I submit and when?

* * * * *

(c) If you are required to conduct a performance test or other initial compliance demonstration as specified in Tables 4 and 6 to this subpart, your Notification of Compliance Status as specified in Table 9 to this subpart must include the information in paragraphs (c)(1) through (4) of this section.

* * * * *

(4) Identification of whether you plan to demonstrate compliance by emissions averaging. If you plan to demonstrate

compliance by emissions averaging, report the emissions level that was being achieved or the control technology employed on December 28, 2015.

* * * * *

■ 5. Section 63.8635 is amended by:

■ a. Revising paragraph (c) introductory text;

■ b. Revising paragraph (c)(4)(iii)(C);

■ c. Adding paragraph (c)(9); and

■ d. Revising paragraph (g)(1).

The revisions and addition read as follows:

§ 63.8635 What reports must I submit and when?

* * * * *

(c) The compliance report must contain the information in paragraphs (c)(1) through (9) of this section.

* * * * *

(4) * * *

(iii) * * *

(C) Based on the information recorded under paragraphs (c)(4)(iii)(A) and (B) of this section, compute the annual percent of affected source operating uptime during which the control device was offline for routine maintenance using Equation 12.

$$RM = \frac{DT_p + DT_c}{SU_p + SU_c}(100) \qquad \text{(Eq. 12)}$$

Where:

RM = Annual percentage of affected source uptime during which control device was offline for routine control device maintenance

DT_p = Control device downtime claimed under the routine control device maintenance alternative standard for the previous semiannual compliance period

DT_c = Control device downtime claimed under the routine control device maintenance alternative standard for the current semiannual compliance period

SU_p = Affected source uptime for the previous semiannual compliance period

SU_c = Affected source uptime for the current semiannual compliance period

* * * * *

(9) If you plan to demonstrate compliance by emissions averaging, certify the emissions level achieved or the control technology employed is no less stringent than the level or control technology contained in the notification of compliance status in § 63.8630(c)(4).

* * * * *

(g) * * *

(1) For data collected using test methods supported by the EPA's Electronic Reporting Tool (ERT) as listed on the EPA's ERT website (*https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert*) at the time of the test, you must submit the results of the performance test to the EPA via the Compliance and Emissions Data Reporting Interface (CEDRI). The CEDRI database can be accessed through the EPA's Central Data Exchange (CDX) (*https://cdx.epa.gov/*). Performance test data must be submitted in a file format generated through the use of the EPA's ERT or an alternate electronic file format consistent with the extensible markup language (XML) schema listed on the EPA's ERT website. If you claim that some of the performance test information being submitted is confidential business information (CBI), you must submit a complete file generated through the use of the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website, including information claimed to be CBI, on a compact disc, flash drive, or other commonly used electronic storage media to the EPA. The electronic media must be clearly marked as CBI and mailed to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same ERT or alternate file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described earlier in this paragraph.

* * * * *

■ 6. Section 63.8640 is amended by revising paragraph (c) introductory text and adding paragraph (c)(11) to read as follows:

§ 63.8640 What records must I keep?

* * * * *

(c) You must also maintain the records listed in paragraphs (c)(1) through (11) of this section.

* * * * *

(11) If you elect to average emissions consistent with § 63.8595(h), you must additionally keep a copy of the emissions averaging implementation plan required in § 63.8595(h)(7), all calculations required under § 63.8595(h), including monthly records of process rate, as applicable, and monitoring records consistent with § 63.8620(f).

■ 7. Section 63.8665 is amended by adding definitions for ''cooling stack,'' ''emissions averaging sources,'' and ''products of combustion (POC) stack,'' in alphabetical order to read as follows:

§ 63.8665 What definitions apply to this subpart?

* * * * *

Cooling stack means a stack (release point) installed on the cooling zone of a tunnel kiln to release air used to cool down the fired product from its maximum temperature to room temperature. A cooling stack does not release any air from the firing zone of the tunnel kiln.

* * * * *

Emissions averaging sources means, for purposes of the emissions averaging provisions of § 63.8595(h), the collection of all existing ceramic tile roller kilns, sanitaryware tunnel kilns, ceramic tile glaze lines using glaze spraying, and sanitaryware glaze spray booths, within a kiln type and size category and within a subcategory.

* * * * *

Products of combustion (POC) stack means a stack (release point) installed on the front end of the firing zone of a tunnel kiln to release air used to heat the greenware from room temperature to its maximum temperature.

* * * * *

■ 8. Table 1 to subpart KKKKK is amended by adding the entries 22 and 23 to read as follows:

Table 1 to Subpart KKKKK of Part 63—Emission Limits

As stated in § 63.8555, you must meet each emission limit in the following table that applies to you:

For each . . .	You must meet the following emission limits . . .
*	*
22. Collection of emissions averaging sources.	PM emissions must not exceed the applicable emission limit, under the emissions averaging option, as determined using Equations 9 through 11.

For each . . .	You must meet the following emission limits . . .
23. Collection of emissions averaging sources.	Hg emissions must not exceed the applicable emission limit, under the emissions averaging option, as determined using Equations 9 through 11.

■ 9. Table 2 to subpart KKKKK is revised to read as follows:

Table 2 to Subpart KKKKK of Part 63—Operating Limits

As stated in § 63.8555, you must meet each operating limit in the following table that applies to you:

For each . . .	You must . . .	Or you must . . .
1. Tunnel or roller kiln equipped with a DIFF or DLS/FF.	a. If you use a bag leak detection system, initiate corrective action within 1 hour of a bag leak detection system alarm and complete corrective actions in accordance with your OM&M plan; operate and maintain the fabric filter such that the alarm is not engaged for more than 5 percent of the total operating time in a 6-month block reporting period; and b. Maintain free-flowing lime in the feed hopper or silo and to the APCD at all times for continuous injection systems; maintain the feeder setting (on a per ton of throughput basis) at or above the level established during the performance test for continuous injection systems in which compliance was demonstrated.	i. Maintain no VE from the DIFF or DLS/FF stack; or ii. Maintain your kiln temperature profile.
2. Tunnel or roller kiln equipped with a WS.	a. Maintain the average scrubber liquid pH for each 3-hour block period at or above the average scrubber liquid pH established during the HF/HCl performance test in which compliance was demonstrated; and b. Maintain the average scrubber liquid flow rate for each 3-hour block period at or above the highest average scrubber liquid flow rate established during the HF/HCl and PM performance tests in which compliance was demonstrated.	
3. Tunnel or roller kiln equipped with an ACI system.	Maintain the 3-hour block average carbon flow rate at or above the highest average carbon flow rate established during the Hg and dioxin/furan performance tests in which compliance was demonstrated.	
4. Tunnel or roller kiln intending to comply with dioxin/furan emission limit without an ACI system.	Maintain the average operating temperature for each 12-hour block period at or below the highest operating temperature established during the dioxin/furan performance test in which compliance was demonstrated.	
5. Tunnel or roller kiln with no add-on control.	a. Maintain no VE from the stack; and b. Maintain the kiln process rate at or below the kiln process rate determined according to § 63.8595(g)(1) if your total facility maximum potential HCl-equivalent emissions are greater than the HCl-equivalent limit in Table 1 to this subpart; and c. Maintain the average operating temperature for each 12-hour block period at or below the highest operating temperature established during the dioxin/furan performance test in which compliance was demonstrated.	i. Maintain your kiln temperature profile.
6. Glaze spray operation equipped with a FF.	a. If you use a bag leak detection system, initiate corrective action within 1 hour of a bag leak detection system alarm and complete corrective actions in accordance with your OM&M plan; operate and maintain the fabric filter such that the alarm is not engaged for more than 5 percent of the total operating time in a 6-month block reporting period.	i. Maintain no VE from the FF stack.
7. Glaze spray operation equipped with a WS.	a. Maintain the average scrubber pressure drop for each 3-hour block period at or above the average pressure drop established during the PM performance test in which compliance was demonstrated; and b. Maintain the average scrubber liquid flow rate for each 3-hour block period at or above the average scrubber liquid flow rate established during the PM performance test in which compliance was demonstrated.	
8. Glaze spray operation equipped with a water curtain.	a. Conduct daily inspections to verify the presence of water flow to the wet control system; and b. Conduct annual inspections of the interior of the control equipment (if applicable) to determine the structural integrity and condition of the control equipment.	
9. Glaze spray operation equipped with baffles.	Conduct an annual visual inspection of the baffles to confirm the baffles are in place.	
10. Spray dryer	Maintain the average operating temperature for each 4-hour block period at or above the average temperature established during the dioxin/furan performance test in which compliance was demonstrated.	
11. Floor tile press dryer ...	Maintain the average operating temperature for each 4-hour block period at or below the average temperature established during the dioxin/furan performance test in which compliance was demonstrated.	

■ 10. Table 4 to subpart KKKKK is revised to read as follows:

Table 4 to Subpart KKKKK of Part 63—Requirements for Performance Tests

As stated in § 63.8595, you must conduct each performance test in the following table that applies to you:

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For each...	You must...	Using...	According to the following requirements...
1. Tunnel or roller kiln.	a. Select locations of sampling ports and the number of traverse points.	Method 1 or 1A of 40 CFR part 60, appendix A-1.	Sampling sites must be located at the outlet of the APCD and prior to any releases to the atmosphere for all affected sources.
	b. Determine velocities and volumetric flow rate.	Method 2 of 40 CFR part 60, appendix A-1.	You may use Method 2A, 2C, 2D, or 2F of 40 CFR part 60, appendix A-1, or Method 2G of 40 CFR part 60, appendix A-2, as appropriate, as an alternative to using Method 2 of 40 CFR part 60, appendix A-1.
	c. Conduct gas molecular weight analysis.	Method 3 of 40 CFR part 60, appendix A-2.	You may use Method 3A or 3B of 40 CFR part 60, appendix A-2, as appropriate, as an alternative to using Method 3 of 40 CFR part 60, appendix A-2. ANSI/ASME PTC 19.10-1981 (incorporated by reference, see §63.14) may be used as an alternative to the manual procedures (but not the instrumental procedures) in Methods 3A and 3B.
	d. Measure moisture content of the stack gas.	Method 4 of 40 CFR part 60, appendix A-3.	
	e. Measure HF and HCl emissions.	i. Method 26A of 40 CFR part 60, appendix A-8; or	You may use Method 26 of 40 CFR part 60, appendix A-8, as an alternative to using Method 26A of 40 CFR part 60, appendix A-8, when no acid PM (*e.g.*, HF or HCl dissolved in water droplets emitted by sources controlled by a WS) is present. ASTM D6735-01 (Reapproved 2009) (incorporated by reference, see §63.14) may be used as an alternative to Methods 26 and 26A.

		ii. Method 320 of appendix A of this part.	When using Method 320 of appendix A of this part, you must follow the analyte spiking procedures of section 13 of Method 320 of appendix A of this part, unless you can demonstrate that the complete spiking procedure has been conducted at a similar source. ASTM D6348-03 (Reapproved 2010) (incorporated by reference, see §63.14) may be used as an alternative to Method 320 if the test plan preparation and implementation in Annexes A1-A8 are mandatory and the %R in Annex A5 is determined for each target analyte.
	f. Measure PM emissions.	i. Method 5 of 40 CFR part 60, appendix A-3; or	
		ii. Method 29 of 40 CFR part 60, appendix A-8.	
	g. Measure Hg emissions.	Method 29 of 40 CFR part 60, appendix A-8.	ASTM D6784-02 (Reapproved 2008) (incorporated by reference, see §63.14) may be used as an alternative to Method 29 (portion for Hg only).
	h. Measure dioxin/furan emissions.	Method 23 of 40 CFR part 60, appendix A-7.	
2. Glaze spray operation	a. Select locations of sampling ports and the number of traverse points.	Method 1 or 1A of 40 CFR part 60, appendix A-1.	Sampling sites must be located at the outlet of the APCD and prior to any releases to the atmosphere for all affected sources.
	b. Determine velocities and volumetric flow rate.	Method 2 of 40 CFR part 60, appendix A-1.	You may use Method 2A, 2C, 2D, or 2F of 40 CFR part 60, appendix A-1, or Method 2G of 40 CFR part 60, appendix A-2, as appropriate, as an alternative to using Method 2 of 40 CFR part 60, appendix A-1.
	c. Conduct gas molecular weight analysis.	Method 3 of 40 CFR part 60, appendix A-2.	You may use Method 3A or 3B of 40 CFR part 60, appendix A-2, as appropriate, as an alternative to using Method 3 of 40 CFR part 60, appendix A-2. ANSI/ASME PTC 19.10-1981 (incorporated by reference, see §63.14) may be used as an alternative to the manual procedures (but not the instrumental procedures) in Methods 3A and 3B.
	d. Measure moisture content of the stack gas.	Method 4 of 40 CFR part 60, appendix A-3.	
	e. Measure PM emissions.	Method 5 of 40 CFR part 60, appendix A-3.	

	f. Measure Hg emissions (tile glaze spray operations only).	Method 29 of 40 CFR part 60, appendix A-8.	ASTM D6784-02 (Reapproved 2008) (incorporated by reference, see §63.14) may be used as an alternative to Method 29 (portion for Hg only).
3. Spray dryer or floor tile press dryer	a. Select locations of sampling ports and the number of traverse points.	Method 1 or 1A of 40 CFR part 60, appendix A-1.	Sampling sites must be located at the outlet of the APCD and prior to any releases to the atmosphere for all affected sources.
	b. Determine velocities and volumetric flow rate.	Method 2 of 40 CFR part 60, appendix A-1.	You may use Method 2A, 2C, 2D, or 2F of 40 CFR part 60, appendix A-1, or Method 2G of 40 CFR part 60, appendix A-2, as appropriate, as an alternative to using Method 2 of 40 CFR part 60, appendix A-1.
	c. Conduct gas molecular weight analysis.	Method 3 of 40 CFR part 60, appendix A-2.	You may use Method 3A or 3B of 40 CFR part 60, appendix A-2, as appropriate, as an alternative to using Method 3 of 40 CFR part 60, appendix A-2. ANSI/ASME PTC 19.10-1981 (incorporated by reference, see §63.14) may be used as an alternative to the manual procedures (but not the instrumental procedures) in Methods 3A and 3B.
	d. Measure moisture content of the stack gas.	Method 4 of 40 CFR part 60, appendix A-3.	
	e. Measure dioxin/furan emissions.	Method 23 of 40 CFR part 60, appendix A-7.	
4. Tunnel or roller kiln with no add-on control.	a. Establish the operating limit(s) for kiln process rate if the total facility maximum potential HCl-equivalent emissions are greater than the HCl-equivalent limit in Table 1 to this subpart.	HCl-equivalent limit in Table 1 to this subpart and emissions and production data from the HF/HCl/Cl_2 performance test.	Using the procedures in §63.8595(g)(1), you must determine the maximum process rate(s) for your kiln(s) that would ensure total facility maximum potential HCl-equivalent emissions remain at or below the HCl-equivalent limit in Table 1 to this subpart. The maximum process rate(s) would become your site-specific process rate operating limit(s).

	b. Establish the operating limit for kiln operating temperature.	i. Data from the kiln operating temperature measurement device during the dioxin/furan performance test.	(1) You must continuously measure the kiln operating temperature during three 4-hour test runs and, from a 12-hour block of time consisting of 1-hour increments, calculate the following two values: (a) The standard deviation of the 12 1-hour temperature measurements, calculated as follows: $\sigma = \sqrt{\frac{1}{N} \times \sum_{i=1}^{N} (x_i - \mu)^2}$ (Eq. 13) Where: σ = standard deviation x_i = each 1-hour temperature measurement μ = mean of all 12 1-hour measurements N = 12 measurements (b) 1 percent of the 12-hour block average. (2) You must decide which of the two values would provide the greatest variability (*i.e.*, the highest value), and then add this value to the 12-hour block average measured during the compliance testing. This would become the maximum temperature your kiln would be allowed to operate during normal operations.
5. Tunnel or roller kiln that is complying with PM and/or Hg production-based emission limits.	Determine the production rate during each PM/Hg test run in order to determine compliance with PM and/or Hg production-based emission limits.	Production data collected during the PM/Hg performance tests (*e.g.*, the number of ceramic pieces and weight per piece in the kiln during a test run divided by the amount of time to fire a piece).	You must measure and record the production rate, on a ton of throughput processed basis, of the affected kiln for each of the three test runs.

6. Tunnel or roller kiln equipped with a DIFF or DLS/FF.	Establish the operating limit for the lime feeder setting.	Data from the lime feeder during the HF/HCl performance test.	For continuous lime injection systems, you must ensure that lime in the feed hopper or silo and to the APCD is free-flowing at all times during the performance test and record the feeder setting, on a per ton of throughput basis, for the three test runs. If the feed rate setting varies during the three test runs, determine and record the average feed rate from the three test runs. The average of the three test runs establishes your minimum site-specific feed rate operating limit.
7. Tunnel or roller kiln equipped with a WS.	a. Establish the operating limit for the average scrubber liquid pH.	Data from the pH measurement device during the HF/HCl performance test.	You must continuously measure the scrubber liquid pH, determine and record the block average pH values for the three test runs, and determine and record the 3-hour block average of the recorded pH measurements for the three test runs. The average of the three test runs establishes your minimum site-specific liquid pH operating limit.
	b. Establish the operating limit for the average scrubber liquid flow rate.	Data from the flow rate measurement device during the HF/HCl and PM performance tests.	You must continuously measure the scrubber liquid flow rate, determine and record the block average flow rate values for the three test runs, and determine and record the 3-hour block average of the recorded flow rate measurements for the three test runs. The average of the three test runs establishes your minimum site-specific liquid flow rate operating level. If different average wet scrubber liquid flow rate values are measured during the HF/HCl and PM tests, the highest of the average values become your site-specific operating limit.
8. Tunnel or roller kiln equipped with an ACI system	Establish the operating limit for the average carbon flow rate.	Data from the carbon flow rate measurement conducted during the Hg and dioxin/furan performance tests.	You must measure the carbon flow rate during each test run, determine and record the block average carbon flow rate values for the three test runs, and determine and record the 3-hour block average of the recorded carbon flow rate measurements for the three test runs. The average of the three test runs establishes your minimum site-specific activated carbon flow rate operating limit.

9. Tunnel or roller kiln intending to comply with dioxin/furan emission limit without an ACI system.	a. Establish the operating limit for kiln operating temperature.	i. Data from the kiln operating temperature measurement device during the dioxin/furan performance test.	(1) You must continuously measure the kiln operating temperature during three 4-hour test runs and, from a 12-hour block of time consisting of 1-hour increments, calculate the following two values: (a) The standard deviation of the 12 1-hour temperature measurements, calculated as follows: $\sigma = \sqrt{\frac{1}{N} \times \sum_{i=1}^{N} (x_i - \mu)^2}$ (Eq. 14) Where: σ = standard deviation x_i = each 1-hour temperature measurement μ = mean of all 12 1-hour measurements N = 12 measurements (b) 1 percent of the 12-hour block average. (2) You must decide which of the two values would provide the greatest variability (*i.e.*, the highest value), and then add this value to the 12-hour block average measured during the compliance testing. This would become the maximum temperature your kiln would be allowed to operate during normal operations.
10. Glaze spray operation equipped with a WS.	a. Establish the operating limit for the average scrubber pressure drop.	Data from the pressure drop measurement device during the PM performance test.	You must continuously measure the scrubber pressure drop, determine and record the block average pressure drop values for the three test runs, and determine and record the 3-hour block average of the recorded pressure drop measurements for the three test runs. The average of the three test runs establishes your minimum site-specific pressure drop operating limit.

	b. Establish the operating limit for the average scrubber liquid flow rate.	Data from the flow rate measurement device during the PM performance test.	You must continuously measure the scrubber liquid flow rate, determine and record the block average flow rate values for the three test runs, and determine and record the 3-hour block average of the recorded flow rate measurements for the three test runs. The average of the three test runs establishes your minimum site-specific liquid flow rate operating limit.
11. Spray dryer.	Establish the operating limit for operating temperature.	Data from the temperature measurement device during the dioxin/furan performance test.	You must continuously measure the operating temperature, determine and record the block average temperature values for the three test runs, and determine and record the 4-hour block average of the recorded temperature measurements for the three test runs. The average of the three test runs establishes your minimum site-specific operating limit.
12. Floor tile press dryer.	Establish the operating limit for operating temperature.	Data from the temperature measurement device during the dioxin/furan performance test.	You must continuously measure the operating temperature, determine and record the block average temperature values for the three test runs, and determine and record the 4-hour block average of the recorded temperature measurements for the three test runs. The average of the three test runs establishes your maximum site-specific operating limit.

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■ 11. Table 6 to subpart KKKKK is revised to read as follows:

Table 6 to Subpart KKKKK of Part 63—Initial Compliance With Emission Limitations and Work Practice Standards

As stated in § 63.8605, you must demonstrate initial compliance with each emission limitation and work practice standard that applies to you according to the following table:

For each . . .	For the following . . .	You have demonstrated initial compliance if . . .
1. Collection of all tunnel or roller kilns at the facility.	a. HF, HCl, and Cl_2 emissions must not exceed 62 kg/hr (140 lb/hr) HCl equivalent.	i. You measure HF and HCl emissions for each kiln using Method 26 or 26A of 40 CFR part 60, appendix A–8 or its alternative, ASTM D6735–01 (Reapproved 2009) (incorporated by reference, see § 63.14); or Method 320 of appendix A of this part or its alternative, ASTM D6348–03 (Reapproved 2010) (incorporated by reference, see § 63.14); and ii. You calculate the HCl-equivalent emissions for HF for each kiln using Equation 4 to this subpart; and iii. You sum the HCl-equivalent values for all kilns at the facility using Equation 5 to this subpart; and iv. The facility total HCl-equivalent does not exceed 62 kg/hr (140 lb/hr).
2. Existing floor tile roller kiln	a. PM emissions must not exceed 0.063 kg/Mg (0.13 lb/ton) of fired product.	i. The PM emissions measured using Method 5 of 40 CFR part 60, appendix A–3 or Method 29 of 40 CFR part 60, appendix A–8, over the period of the initial performance test, according to the calculations in § 63.8595(f)(1), do not exceed 0.063 kg/Mg (0.13 lb/ton) of fired product; and ii. You establish and have a record of the applicable operating limits listed in Table 2 to this subpart over the period of the initial performance test during which PM emissions did not exceed 0.063 kg/Mg (0.13 lb/ton) of fired product.
	b. Hg emissions must not exceed 6.3 E–05 kg/Mg (1.3 E–04 lb/ton) of fired product.	i. The Hg emissions measured using Method 29 of 40 CFR part 60, appendix A–8 or its alternative, ASTM D6784–02 (Reapproved 2008) (incorporated by reference, see § 63.14), over the period of the initial performance test, do not exceed 6.3 E–05 kg/Mg (1.3 E–04 lb/ton) of fired product; and

For each . . .	For the following . . .	You have demonstrated initial compliance if . . .
		ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which Hg emissions did not exceed 6.3 E–05 kg/Mg (1.3 E–04 lb/ton) of fired product.
	c. Dioxin/furan emissions must not exceed 2.8 ng/kg of fired product.	i. The dioxin/furan emissions measured using Method 23 of 40 CFR part 60, appendix A–7, over the period of the initial performance test, do not exceed 2.8 ng/kg of fired product; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which dioxin/furan emissions did not exceed 2.8 ng/kg of fired product.
3. Existing wall tile roller kiln	a. PM emissions must not exceed 0.19 kg/Mg (0.37 lb/ton) of fired product.	i. The PM emissions measured using Method 5 of 40 CFR part 60, appendix A–3 or Method 29 of 40 CFR part 60, appendix A–8, over the period of the initial performance test, according to the calculations in § 63.8595(f)(1), do not exceed 0.19 kg/Mg (0.37 lb/ton) of fired product; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which PM emissions did not exceed 0.19 kg/Mg (0.37 lb/ton) of fired product.
	b. Hg emissions must not exceed 1.1 E–04 kg/Mg (2.1 E–04 lb/ton) of fired product.	i. The Hg emissions measured using Method 29 of 40 CFR part 60, appendix A–8 or its alternative, ASTM D6784–02 (Reapproved 2008) (incorporated by reference, see § 63.14), over the period of the initial performance test, do not exceed 1.1 E–04 kg/Mg (2.1 E–04 lb/ton) of fired product; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which Hg emissions did not exceed 1.1 E–04 kg/Mg (2.1 E–04 lb/ton) of fired product.
	c. Dioxin/furan emissions must not exceed 0.22 ng/kg of fired product.	i. The dioxin/furan emissions measured using Method 23 of 40 CFR part 60, appendix A–7, over the period of the initial performance test, do not exceed 0.22 ng/kg of fired product; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which dioxin/furan emissions did not exceed 0.22 ng/kg of fired product.
4. Existing first-fire sanitaryware tunnel kiln.	a. PM emissions must not exceed 0.17 kg/Mg (0.34 lb/ton) of greenware fired.	i. The PM emissions measured using Method 5 of 40 CFR part 60, appendix A–3 or Method 29 of 40 CFR part 60, appendix A–8, over the period of the initial performance test, according to the calculations in § 63.8595(f)(1), do not exceed 0.17 kg/Mg (0.34 lb/ton) of greenware fired; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which PM emissions did not exceed 0.17 kg/Mg (0.34 lb/ton) of greenware fired.
	b. Hg emissions must not exceed 1.3 E–04 kg/Mg (2.6 E–04 lb/ton) of greenware fired.	i. The Hg emissions measured using Method 29 of 40 CFR part 60, appendix A–8 or its alternative, ASTM D6784–02 (Reapproved 2008) (incorporated by reference, see § 63.14), over the period of the initial performance test, do not exceed 1.3 E–04 kg/Mg (2.6 E–04 lb/ton) of greenware fired; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which Hg emissions did not exceed 1.3 E–04 kg/Mg (2.6 E–04 lb/ton) of greenware fired.
	c. Dioxin/furan emissions must not exceed 3.3 ng/kg of greenware fired.	i. The dioxin/furan emissions measured using Method 23 of 40 CFR part 60, appendix A–7, over the period of the initial performance test, do not exceed 3.3 ng/kg of greenware fired; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which dioxin/furan emissions did not exceed 3.3 ng/kg of greenware fired.
5. Existing tile glaze line with glaze spraying.	a. PM emissions must not exceed 0.93 kg/Mg (1.9 lb/ton) of first-fire glaze sprayed (dry weight basis).	i. The PM emissions measured using Method 5 of 40 CFR part 60, appendix A–3, over the period of the initial performance test, according to the calculations in § 63.8595(f)(2), do not exceed 0.93 kg/Mg (1.9 lb/ton) of first-fire glaze sprayed (dry weight basis); and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which PM emissions did not exceed 0.93 kg/Mg (1.9 lb/ton) of first-fire glaze sprayed (dry weight basis).
	b. Hg emissions must not exceed 8.0 E–05 kg/Mg (1.6 E–04 lb/ton) of first-fire glaze sprayed (dry weight basis).	i. The Hg emissions measured using Method 29 of 40 CFR part 60, appendix A–8 or its alternative, ASTM D6784–02 (Reapproved 2008) (incorporated by reference, see § 63.14), over the period of the initial performance test, do not exceed 8.0 E–05 kg/Mg (1.6 E–04 lb/ton) of first-fire glaze sprayed (dry weight basis); and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which Hg emissions did not exceed 8.0 E–05 kg/Mg (1.6 E–04 lb/ton) of first-fire glaze sprayed (dry weight basis).
6. Existing sanitaryware manual glaze application.	a. PM emissions must not exceed 18 kg/Mg (35 lb/ton) of first-fire glaze sprayed (dry weight basis).	i. The PM emissions measured using Method 5 of 40 CFR part 60, appendix A–3, over the period of the initial performance test, according to the calculations in § 63.8595(f)(2), do not exceed 18 kg/Mg (35 lb/ton) of first-fire glaze sprayed (dry weight basis); and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which PM emissions did not exceed 18 kg/Mg (35 lb/ton) of first-fire glaze sprayed (dry weight basis).
7. Existing sanitaryware spray machine glaze application.	a. PM emissions must not exceed 6.2 kg/Mg (13 lb/ton) of first-fire glaze sprayed (dry weight basis).	i. The PM emissions measured using Method 5 of 40 CFR part 60, appendix A–3, over the period of the initial performance test, according to the calculations in § 63.8595(f)(2), do not exceed 6.2 kg/Mg (13 lb/ton) of first-fire glaze sprayed (dry weight basis); and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which PM emissions did not exceed 6.2 kg/Mg (13 lb/ton) of first-fire glaze sprayed (dry weight basis).

For each . . .	For the following . . .	You have demonstrated initial compliance if . . .
8. Existing sanitaryware robot glaze application.	a. PM emissions must not exceed 4.5 kg/Mg (8.9 lb/ton) of first-fire glaze sprayed (dry weight basis).	i. The PM emissions measured using Method 5 of 40 CFR part 60, appendix A–3, over the period of the initial performance test, according to the calculations in § 63.8595(f)(2), do not exceed 4.5 kg/Mg (8.9 lb/ton) of first-fire glaze sprayed (dry weight basis); and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which PM emissions did not exceed 4.5 kg/Mg (8.9 lb/ton) of first-fire glaze sprayed (dry weight basis).
9. Existing floor tile spray dryer	a. Dioxin/furan emissions must not exceed 19 ng/kg of throughput processed.	i. The dioxin/furan emissions measured using Method 23 of 40 CFR part 60, appendix A–7, over the period of the initial performance test, do not exceed 19 ng/kg of throughput processed; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which dioxin/furan emissions did not exceed 19 ng/kg of throughput processed.
10. Existing wall tile spray dryer	a. Dioxin/furan emissions must not exceed 0.058 ng/kg of throughput processed.	i. The dioxin/furan emissions measured using Method 23 of 40 CFR part 60, appendix A–7, over the period of the initial performance test, do not exceed 0.058 ng/kg of throughput processed; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which dioxin/furan emissions did not exceed 0.058 ng/kg of throughput processed.
11. Existing floor tile press dryer	a. Dioxin/furan emissions must not exceed 0.024 ng/kg of throughput processed.	i. The dioxin/furan emissions measured using Method 23 of 40 CFR part 60, appendix A–7, over the period of the initial performance test, do not exceed 0.024 ng/kg of throughput processed; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which dioxin/furan emissions did not exceed 0.024 ng/kg of throughput processed.
12. New or reconstructed floor tile roller kiln.	a. PM emissions must not exceed 0.019 kg/Mg (0.037 lb/ton) of fired product.	i. The PM emissions measured using Method 5 of 40 CFR part 60, appendix A–3 or Method 29 of 40 CFR part 60, appendix A–8, over the period of the initial performance test, according to the calculations in § 63.8595(f)(1), do not exceed 0.019 kg/Mg (0.037 lb/ton) of fired product; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which PM emissions did not exceed 0.019 kg/Mg (0.037 lb/ton) of fired product.
	b. Hg emissions must not exceed 2.0 E–05 kg/Mg (3.9 E–05 lb/ton) of fired product.	i. The Hg emissions measured using Method 29 of 40 CFR part 60, appendix A–8 or its alternative, ASTM D6784–02 (Reapproved 2008) (incorporated by reference, see § 63.14), over the period of the initial performance test, do not exceed 2.0 E–05 kg/Mg (3.9 E–05 lb/ton) of fired product; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which Hg emissions did not exceed 2.0 E–05 kg/Mg (3.9 E–05 lb/ton) of fired product.
	c. Dioxin/furan emissions must not exceed 1.3 ng/kg of fired product.	i. The dioxin/furan emissions measured using Method 23 of 40 CFR part 60, appendix A–7, over the period of the initial performance test, do not exceed 1.3 ng/kg of fired product; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which dioxin/furan emissions did not exceed 1.3 ng/kg of fired product.
13. New or reconstructed wall tile roller kiln.	a. PM emissions must not exceed 0.19 kg/Mg (0.37 lb/ton) of fired product.	i. The PM emissions measured using Method 5 of 40 CFR part 60, appendix A–3 or Method 29 of 40 CFR part 60, appendix A–8, over the period of the initial performance test, according to the calculations in § 63.8595(f)(1), do not exceed 0.19 kg/Mg (0.37 lb/ton) of fired product; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which PM emissions did not exceed 0.19 kg/Mg (0.37 lb/ton) of fired product.
	b. Hg emissions must not exceed 1.1 E–04 kg/Mg (2.1 E–04 lb/ton) of fired product.	i. The Hg emissions measured using Method 29 of 40 CFR part 60, appendix A–8 or its alternative, ASTM D6784–02 (Reapproved 2008) (incorporated by reference, see § 63.14), over the period of the initial performance test, do not exceed 1.1 E–04 kg/Mg (2.1 E–04 lb/ton) of fired product; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which Hg emissions did not exceed 1.1 E–04 kg/Mg (2.1 E–04 lb/ton) of fired product.
	c. Dioxin/furan emissions must not exceed 0.22 ng/kg of fired product.	i. The dioxin/furan emissions measured using Method 23 of 40 CFR part 60, appendix A–7, over the period of the initial performance test, do not exceed 0.22 ng/kg of fired product; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which dioxin/furan emissions did not exceed 0.22 ng/kg of fired product.
14. New or reconstructed first-fire sanitaryware tunnel kiln.	a. PM emissions must not exceed 0.048 kg/Mg (0.095 lb/ton) of greenware fired.	i. The PM emissions measured using Method 5 of 40 CFR part 60, appendix A–3 or Method 29 of 40 CFR part 60, appendix A–8, over the period of the initial performance test, according to the calculations in § 63.8595(f)(1), do not exceed 0.048 kg/Mg (0.095 lb/ton) of greenware fired; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which PM emissions did not exceed 0.048 kg/Mg (0.095 lb/ton) of greenware fired.
	b. Hg emissions must not exceed 6.1 E–05 kg/Mg (1.3 E–04 lb/ton) of greenware fired.	i. The Hg emissions measured using Method 29 of 40 CFR part 60, appendix A–8 or its alternative, ASTM D6784–02 (Reapproved 2008) (incorporated by reference, see § 63.14), over the period of the initial performance test, do not exceed 6.1 E–05 kg/Mg (1.3 E–04 lb/ton) of greenware fired; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which Hg emissions did not exceed 6.1 E–05 kg/Mg (1.3 E–04 lb/ton) of greenware fired.

For each . . .	For the following . . .	You have demonstrated initial compliance if . . .
	c. Dioxin/furan emissions must not exceed 0.99 ng/kg of greenware fired.	i. The dioxin/furan emissions measured using Method 23 of 40 CFR part 60, appendix A–7, over the period of the initial performance test, do not exceed 0.99 ng/kg of greenware fired; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which dioxin/furan emissions did not exceed 0.99 ng/kg of greenware fired.
15. New or reconstructed tile glaze line with glaze spraying.	a. PM emissions must not exceed 0.31 kg/Mg (0.61 lb/ton) of first-fire glaze sprayed (dry weight basis).	i. The PM emissions measured using Method 5 of 40 CFR part 60, appendix A–3, over the period of the initial performance test, according to the calculations in § 63.8595(f)(2), do not exceed 0.31 kg/Mg (0.61 lb/ton) of first-fire glaze sprayed (dry weight basis); and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which PM emissions did not exceed 0.31 kg/Mg (0.61 lb/ton) of first-fire glaze sprayed (dry weight basis).
	b. Hg emissions must not exceed 8.0 E–05 kg/Mg (1.6 E–04 lb/ton) of first-fire glaze sprayed (dry weight basis).	i. The Hg emissions measured using Method 29 of 40 CFR part 60, appendix A–8 or its alternative, ASTM D6784–02 (Reapproved 2008) (incorporated by reference, see § 63.14), over the period of the initial performance test, do not exceed 8.0 E–05 kg/Mg (1.6 E–04 lb/ton) of first-fire glaze sprayed (dry weight basis); and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which Hg emissions did not exceed 8.0 E–05 kg/Mg (1.6 E–04 lb/ton) of first-fire glaze sprayed (dry weight basis).
16. New or reconstructed sanitaryware manual glaze application.	a. PM emissions must not exceed 2.0 kg/Mg (3.9 lb/ton) of first-fire glaze sprayed (dry weight basis).	i. The PM emissions measured using Method 5 of 40 CFR part 60, appendix A–3, over the period of the initial performance test, according to the calculations in § 63.8595(f)(2), do not exceed 2.0 kg/Mg (3.9 lb/ton) of first-fire glaze sprayed (dry weight basis); and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which PM emissions did not exceed 2.0 kg/Mg (3.9 lb/ton) of first-fire glaze sprayed (dry weight basis).
17. New or reconstructed sanitaryware spray machine glaze application.	a. PM emissions must not exceed 1.6 kg/Mg (3.2 lb/ton) of first-fire glaze sprayed (dry weight basis).	i. The PM emissions measured using Method 5 of 40 CFR part 60, appendix A–3, over the period of the initial performance test, according to the calculations in § 63.8595(f)(2), do not exceed 1.6 kg/Mg (3.2 lb/ton) of first-fire glaze sprayed (dry weight basis); and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which PM emissions did not exceed 1.6 kg/Mg (3.2 lb/ton) of first-fire glaze sprayed (dry weight basis).
18. New or reconstructed sanitaryware robot glaze application.	a. PM emissions must not exceed 1.2 kg/Mg (2.3 lb/ton) of first-fire glaze sprayed (dry weight basis).	i. The PM emissions measured using Method 5 of 40 CFR part 60, appendix A–3, over the period of the initial performance test, according to the calculations in § 63.8595(f)(2), do not exceed 1.2 kg/Mg (2.3 lb/ton) of first-fire glaze sprayed (dry weight basis); and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which PM emissions did not exceed 1.2 kg/Mg (2.3 lb/ton) of first-fire glaze sprayed (dry weight basis).
19. New or reconstructed floor tile spray dryer.	a. Dioxin/furan emissions must not exceed 0.071 ng/kg of throughput processed.	i. The dioxin/furan emissions measured using Method 23 of 40 CFR part 60, appendix A–7, over the period of the initial performance test, do not exceed 0.071 ng/kg of throughput processed; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which dioxin/furan emissions did not exceed 0.071 ng/kg of throughput processed.
20. New or reconstructed wall tile spray dryer.	a. Dioxin/furan emissions must not exceed 0.058 ng/kg of throughput processed.	i. The dioxin/furan emissions measured using Method 23 of 40 CFR part 60, appendix A–7, over the period of the initial performance test, do not exceed 0.058 ng/kg of throughput processed; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which dioxin/furan emissions did not exceed 0.058 ng/kg of throughput processed.
21. New or reconstructed floor tile press dryer.	a. Dioxin/furan emissions must not exceed 0.024 ng/kg of throughput processed.	i. The dioxin/furan emissions measured using Method 23 of 40 CFR part 60, appendix A–7, over the period of the initial performance test, do not exceed 0.024 ng/kg of throughput processed; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which dioxin/furan emissions did not exceed 0.024 ng/kg of throughput processed.
22. Existing, new, or reconstructed sanitaryware shuttle kiln.	a. Minimize HAP emissions	i. Use natural gas, or equivalent, as the kiln fuel; and ii. Develop a designed firing time and temperature cycle for the sanitaryware shuttle kiln. You must either program the time and temperature cycle into your kiln or track each step on a log sheet; and iii. Label each sanitaryware shuttle kiln with the maximum load (in tons) of greenware that can be fired in the kiln during a single firing cycle; and iv. Develop maintenance procedures for each kiln that, at a minimum, specify the frequency of inspection and maintenance of temperature monitoring devices, controls that regulate air-to-fuel ratios, and controls that regulate firing cycles.

■ 12. Table 7 to subpart KKKKK is revised to read as follows:

Table 7 to Subpart KKKKK of Part 63—Continuous Compliance With Emission Limitations and Work Practice Standards

As stated in § 63.8620, you must demonstrate continuous compliance with each emission limitation and work practice standard that applies to you according to the following table:

For each . . .	For the following . . .	You must demonstrate continuous compliance by . . .	Or by . .
1. Tunnel or roller kiln equipped with a DIFF or DLS/FF.	a. Each emission limit in Table 1 to this subpart and each operating limit in Item 1 of Table 2 to this subpart for kilns equipped with DIFF or DLS/FF.	i. If you use a bag leak detection system, as prescribed in 63.8450(e), initiating corrective action within 1 hour of a bag leak detection system alarm and completing corrective actions in accordance with your OM&M plan; operating and maintaining the fabric filter such that the alarm is not engaged for more than 5 percent of the total operating time in a 6-month block reporting period; in calculating this operating time fraction, if inspection of the fabric filter demonstrates that no corrective action is required, no alarm time is counted; if corrective action is required, each alarm is counted as a minimum of 1 hour; if you take longer than 1 hour to initiate corrective action, the alarm time is counted as the actual amount of time taken by you to initiate corrective action; and ii. Verifying that lime is free-flowing via a load cell, carrier gas/lime flow indicator, carrier gas pressure drop measurement system, or other system; recording all monitor or sensor output, and if lime is found not to be free flowing, promptly initiating and completing corrective actions in accordance with your OM&M plan; recording the feeder setting once each shift of operation to verify that the feeder setting is being maintained at or above the level established during the HF/HCl performance test in which compliance was demonstrated.	(1) Performing VE observations of the DIFF or DLS/FF stack at the frequency specified in § 63.8620(e) using Method 22 of 40 CFR part 60, appendix A–7; and maintaining no VE from the DIFF or DLS/FF stack; or (2) Maintaining your kiln temperature profile; for any incidence where the kiln is out of control (*i.e.,* exceeds its temperature profile), performing VE observations of the DIFF or DLS/FF stack as specified in § 63.8620(e) using Method 22 of 40 CFR part 60, appendix A–7; and observing no VE from the DIFF or DLS/FF stack.
2. Tunnel or roller kiln equipped with a WS.	a. Each emission limit in Table 1 to this subpart and each operating limit in Item 2 of Table 2 to this subpart for kilns equipped with WS.	i. Collecting the scrubber liquid pH data according to § 63.8600(a); reducing the scrubber liquid pH data to 3-hour block averages according to § 63.8600(a); maintaining the average scrubber liquid pH for each 3-hour block period at or above the average scrubber liquid pH established during the HF/HCl performance test in which compliance was demonstrated; and ii. Collecting the scrubber liquid flow rate data according to § 63.8600(a); reducing the scrubber liquid flow rate data to 3-hour block averages according to § 63.8600(a); maintaining the average scrubber liquid flow rate for each 3-hour block period at or above the highest average scrubber liquid flow rate established during the HF/HCl and PM performance tests in which compliance was demonstrated.	
3. Tunnel or roller kiln equipped with an ACI system.	Each emission limit in Table 1 to this subpart and each operating limit in Item 3 of Table 2 to this subpart for kilns equipped with ACI system.	Collecting the carbon flow rate data according to § 63.8600(a); reducing the carbon flow rate data to 3-hour block averages according to § 63.8600(a); maintaining the average carbon flow rate for each 3-hour block period at or above the highest average carbon flow rate established during the Hg and dioxin/furan performance tests in which compliance was demonstrated.	
4. Tunnel or roller kiln intending to comply with dioxin/furan emission limit without an ACI system.	Each emission limit in Table 1 to this subpart and each operating limit in Item 4 of Table 2 to this subpart for kilns intending to comply with dioxin/furan emission limit without an ACI system.	Collecting the operating temperature data according to § 63.8600(a); and maintaining the operating temperature at or below the highest operating temperature established during the dioxin/furan performance test in which compliance was demonstrated.	Collecting the operating temperature data according to § 63.8600(a); reducing the operating temperature data to a 12-hour block average; and maintaining the average operating temperature for each 12-hour block period at or below the highest operating temperature established during the dioxin/furan performance test in which compliance was demonstrated.
5. Tunnel or roller kiln with no add-on control.	a. Each emission limit in Table 1 to this subpart and each operating limit in Item 5 of Table 2 to this subpart for tunnel or roller kilns with no add-on control.	i. Performing VE observations of the stack at the frequency specified in § 63.8620(e) using Method 22 of 40 CFR part 60, appendix A–7; and maintaining no VE from the stack; and	(1) Maintaining your kiln temperature profile; for any incidence where the kiln is out of control (*i.e.,* exceeds its temperature profile), performing VE observations of the DIFF or DLS/FF stack as specified in § 63.8620(e) using Method 22 of 40 CFR part 60, appendix A–7; and observing no VE from the stack.

For each . . .	For the following . . .	You must demonstrate continuous compliance by . . .	Or by . .
		ii. If your last calculated total facility maximum potential HCl-equivalent was not at or below the health-based standard in Table 1 to this subpart, collecting the kiln process rate data according to § 63.8600(a); reducing the kiln process rate data to 3-hour block averages according to § 63.8600(a); maintaining the average kiln process rate for each 3-hour block period at or below the kiln process rate determined according to § 63.8595(g)(1); and	
		iii. Collecting the operating temperature data according to § 63.8600(a); and maintaining the operating temperature at or below the highest operating temperature established during the dioxin/furan performance test in which compliance was demonstrated.	(1) Collecting the operating temperature data according to § 63.8600(a); reducing the operating temperature data to a 12-hour block average; and maintaining the average operating temperature for each 12-hour block period at or below the highest operating temperature established during the dioxin/furan performance test in which compliance was demonstrated.
6. Glaze spray operation equipped with a FF.	Each emission limit in Table 1 to this subpart and each operating limit in Item 6 of Table 2 to this subpart for glaze spray operations equipped with a FF.	If you use a bag leak detection system, initiating corrective action within 1 hour of a bag leak detection system alarm and completing corrective actions in accordance with your OM&M plan; operating and maintaining the fabric filter such that the alarm is not engaged for more than 5 percent of the total operating time in a 6-month block reporting period; in calculating this operating time fraction, if inspection of the fabric filter demonstrates that no corrective action is required, no alarm time is counted; if corrective action is required, each alarm is counted as a minimum of 1 hour; if you take longer than 1 hour to initiate corrective action, the alarm time is counted as the actual amount of time taken by you to initiate corrective action.	Performing VE observations of the FF stack at the frequency specified in § 63.8620(e) using Method 22 of 40 CFR part 60, appendix A–7; and maintaining no VE from the FF stack.
7. Glaze spray operation equipped with a WS.	a. Each emission limit in Table 1 to this subpart and each operating limit in Item 7 of Table 2 to this subpart for kilns equipped with WS.	i. Collecting the scrubber pressure drop data according to § 63.8600(a); reducing the scrubber pressure drop data to 3-hour block averages according to § 63.8600(a); maintaining the average scrubber pressure drop for each 3-hour block period at or above the average pressure drop established during the PM performance test in which compliance was demonstrated; and	
		ii. Collecting the scrubber liquid flow rate data according to § 63.8600(a); reducing the scrubber liquid flow rate data to 3-hour block averages according to § 63.8600(a); maintaining the average scrubber liquid flow rate for each 3-hour block period at or above the average scrubber liquid flow rate established during the PM performance test in which compliance was demonstrated.	
8. Glaze spray operation equipped with a water curtain.	a. Each emission limit in Table 1 to this subpart and each operating limit in Item 8 of Table 2 to this subpart for kilns equipped with a water curtain.	i. Conducting daily inspections to verify the presence of water flow to the wet control system; and	
		ii. Conducting annual inspections of the interior of the control equipment (if applicable) to determine the structural integrity and condition of the control equipment.	
9. Glaze spray operation equipped with baffles.	Each emission limit in Table 1 to this subpart and each operating limit in Item 9 of Table 2 to this subpart for kilns equipped with baffles.	Conducting an annual visual inspection of the baffles to confirm the baffles are in place.	
10. Spray dryer	Each emission limit in Table 1 to this subpart and each operating limit in Item 10 of Table 2 to this subpart for spray dryers.	Collecting the operating temperature data according to § 63.8600(a); reducing the operating temperature data to 4-hour block averages according to § 63.8600(a); maintaining the average operating temperature for each 4-hour block period at or above the average operating temperature established during the dioxin/furan performance test in which compliance was demonstrated.	
11. Floor tile press dryer	Each emission limit in Table 1 to this subpart and each operating limit in Item 11 of Table 2 to this subpart for floor tile press dryers.	Collecting the operating temperature data according to § 63.8600(a); reducing the operating temperature data to 4-hour block averages according to § 63.8600(a); maintaining the average operating temperature for each 4-hour block period at or below the average operating temperature established during the dioxin/furan performance test in which compliance was demonstrated.	

For each . . .	For the following . . .	You must demonstrate continuous compliance by . . .	Or by . .
12. Sanitaryware shuttle kiln.	a. Minimize HAP emissions.	i. Maintaining records documenting your use of natural gas, or an equivalent fuel, as the kiln fuel at all times except during periods of natural gas curtailment or supply interruption; and ii. If you intend to use an alternative fuel, submitting a notification of alternative fuel use within 48 hours of the declaration of a period of natural gas curtailment or supply interruption, as defined in § 63.8665; and iii. Submitting a report of alternative fuel use within 10 working days after terminating the use of the alternative fuel, as specified in § 63.8635(g); and iv. Using a designed firing time and temperature cycle for each sanitaryware shuttle kiln; and v. For each firing load, documenting the total tonnage of greenware placed in the kiln to ensure that it is not greater than the maximum load identified in Item 1.a.iii of Table 3 to this subpart; and vi. Following maintenance procedures for each kiln that, at a minimum, specify the frequency of inspection and maintenance of temperature monitoring devices, controls that regulate air-to-fuel ratios, and controls that regulate firing cycles; and vii. Developing and maintaining records for each sanitaryware shuttle kiln, as specified in § 63.8640.	

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 30

[GN Docket No. 14–177; FCC 18–110]

Use of Spectrum Bands Above 24 GHz for Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, a Fourth Notice of Proposed Rulemaking (*4th FNPRM*) invites members of the public to comment on how best to transition existing spectrum holdings in the 39 GHz band to the new flexible-use band plan, and on using an incentive auction mechanism. The Federal Communications Commission (Commission or FCC) proposes to modify the 39 GHz, Upper 37 GHz, and 47 GHz band plans from 200 megahertz to 100 megahertz channels to facilitate the auctioning of all three bands at the same time. The Commission also proposes an incentive auction to reduce encumbrances and create contiguous blocks of spectrum through the 39 GHz and Upper 37 GHz bands. These proposals will promote the efficient use of this spectrum by incumbents and new licensees.

DATES: Comments are due on or before September 17, 2018, and reply comments are due on or before October 8, 2018.

ADDRESSES: You may submit comments, identified by GN Docket No. 14–177, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's website: https://www.fcc.gov/ecfs/.* Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov,* phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Erik Salovaara, Wireless Telecommunications Bureau, Auctions and Spectrum Access Division, (202) 418–0660, *Erik.Salovaara@fcc.gov* or Simon Banyai, Wireless Telecommunications Bureau, Broadband Division, (202) 418–1443, *Simon.Banyai@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's 4th Further Notice of Proposed Rulemaking (*4th FNPRM*), GN Docket No. 14–177, FCC 18–110, adopted on August 2, 2018, and released on August 3, 2018. The complete text of this document is available for public inspection and copying from 8 a.m. to 4:30 p.m. Eastern Time (ET) Monday through Thursday or from 8 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street SW, Room CY–A257, Washington, DC 20554. The complete text is also available on the Commission's website at *http://wireless.fcc.gov,* or by using the search function on the ECFS web page at *http://www.fcc.gov/cgb/ecfs/.* Alternative formats are available to persons with disabilities by sending an email to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (tty).

Comment Filing Procedures

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *https://www.fcc.gov/ecfs/filings.* Filers should follow the instructions provided on the website for submitting comments. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket number, GN Docket No. 14–177.
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for

each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW, Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Dr., Annapolis Junction, Annapolis, MD 20701.
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Ex Parte Rules—Permit-But-Disclose

Pursuant to § 1.1200(a) of the Commission's rules, this *4th FNPRM* shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with § 1.1206(b). In proceedings governed by § 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the attached *4th FNPRM.* Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments as specified in the *4th FNPRM.* The Commission will send a copy of this *4th FNPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *4th FNPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

Paperwork Reduction Act

The *4th FNPRM* seeks comment on potential new or revised information collection requirements. If the Commission adopts any new or revised information collection requirements, the Commission will publish a notice in the **Federal Register** inviting the public to comment on the requirements, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501–3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

Synopsis

I. Band Plan

1. We propose to modify the 39 GHz band plan from seven 200 megahertz channels to fourteen 100 megahertz channels. This change should better accommodate the repacking of incumbents, which in the vast majority of cases, hold two non-contiguous 50 megahertz license blocks for each original paired license (now unpaired). Given the natural fit between incumbents' existing 100 megahertz holdings and the proposed 100 megahertz channels, the resulting realignment process for incumbents would be less complex than using 200 megahertz channels, because it would result in far fewer partially-filled channels. This change therefore would further our goals of maximizing efficient use of this band and allowing this spectrum to be put to use as soon as possible.

2. Further, changing the band plan from 200 megahertz channels to 100 megahertz channels should not limit this spectrum's potential use for 5G services. The 100 megahertz channels are consistent with 3GPP standards, and licensees can aggregate to larger channel sizes (such as 200 megahertz, 300 megahertz, etc.), should they prefer to do so. Given that 100 megahertz is the baseline to provide 5G services, the Commission has adopted 100 megahertz channels for other UMFUS bands, including the 24 GHz band and Lower 37 GHz (37.0–37.6) band, and we have proposed to adopt 100 megahertz channels for the 42 GHz band. Adopting 100 megahertz channels in the 39 GHz band is consistent with our approach in other mmW spectrum bands to support 5G services.

3. We similarly propose to modify the band plan in the Upper 37 GHz band (37.6–38.6 GHz) from 200 megahertz to 100 megahertz channels. The Upper 37 GHz band is adjacent to the 39 GHz band, and both bands are under the same licensing framework. In aligning the regulatory regimes of these bands—including implementing the same service rules and an operability requirement—the Commission has effectively treated the two bands as one contiguous 2,400 megahertz band of spectrum. We further note that a difference in channel size between the two bands could create strategic challenges and impede bidding flexibility should the Commission auction the two bands together.[1]

[1] With respect to auctioning the Upper 37 GHz band, we note that the *Spectrum Frontiers 3rd FNPRM* is seeking comment on how best to

4. We also propose to modify the band plan for the portion of the 47 GHz band licensed under the UMFUS rules, 47.2–48.2 GHz (47 GHz band), from 200 to 100 megahertz channels. Modifying the band plan for the 47 GHz band to 100 megahertz blocks would provide consistency across the remaining UMFUS bands not yet designated for auction, and licensees can aggregate spectrum licenses, should they desire larger bandwidth. If we auction the 47 GHz band at the same time as we auction the 39 GHz and Upper 37 GHz bands, should all band plans be consistent 100 megahertz blocks?

5. We seek comment on these proposals. Commenters proposing alternative band plans, including retaining the current 200 megahertz channels, should specify the benefits of such a plan, particularly with respect to how it would further our goal of making contiguous spectrum blocks available for both incumbents and new entrants.

II. Reducing Encumbrances in the 39 GHz Band

A. An Incentive Auction

6. We propose to reconfigure and auction together licenses for all the available spectrum in the Upper 37 GHz and 39 GHz bands using an incentive auction. We propose to run a clock auction, in which incumbents and others may participate, to set both the price of new licenses and the amounts for which incumbents will relinquish their spectrum usage rights. This clock auction would simultaneously serve as the reverse and forward components of the incentive auction. At the end of the auction, participating incumbent licensees would receive an incentive payment based on their cancelled incumbent licenses. The amount of the incentive payment could be used as a credit toward the licensees' winning bids for any new licenses in any of the bands offered in the auction. Because the Commission has not previously conducted an incentive auction in this way, we walk through each step in turn.

7. As an initial matter, we propose to use a two-phase auction procedure. In the first phase, participants would bid to win generic spectrum blocks using an ascending clock auction that would determine a uniform price in each PEA—this encompasses the simultaneous forward-and-reverse auction. The second phase would assign specific-frequency licenses by PEA that would aim to ensure contiguity within each PEA. Because unencumbered spectrum blocks in the Upper 37 GHz and 39 GHz bands can be treated as largely interchangeable within a PEA, we propose to offer these blocks as one category of generic blocks in a clock auction. We expect that using a clock auction format with bidding for generic blocks followed by an assignment phase will speed up the auction considerably relative to a typical FCC simultaneous multiple-round auction.

8. Specifically, we propose to use a clock auction design with rules similar to those used for the forward auction in the broadcast incentive auction and the planned 24 GHz auction. Our proposed clock auction format would proceed in a series of rounds, with bidding being conducted simultaneously for all generic spectrum blocks available in the auction. During the clock phase, the auction would announce prices for generic blocks in each PEA, and qualified bidders would submit quantity bids for the number of blocks they seek in the PEA at that clock price. Bidding rounds would be open for predetermined periods of time, during which bidders would indicate their demands for blocks at the clock prices associated with the current round. Bidders would be subject to activity and eligibility rules that govern the pace at which they participate in the auction. In each PEA, the clock price for licenses would increase from round to round if bidders indicate total demand that exceeds the number of blocks available in the category. Bidders would be held to their bids, as in the forward phase of the broadcast incentive auction, with the system only allowing a bidder to reduce demand if aggregate demand would not fall below the available supply of blocks in that PEA. The clock rounds would continue until, for all generic blocks in all geographic areas, the number of blocks demanded does not exceed the supply of available blocks. At that point, those bidders indicating demand for a block in a category at the final clock phase price would be deemed winning bidders.

9. Next, winning bidders from the clock phase would have an opportunity to submit sealed bids by PEA for particular frequency blocks in a separate assignment phase. We propose that this assignment phase be voluntary: Winning bidders need not bid in the assignment phase. Regardless of its participation in the assignment phase, the assignment phase would aim to assign contiguous frequency blocks within a PEA to a bidder that wins multiple blocks.

10. To encourage participation in the reverse auction, we propose to offer incumbents an incentive payment—using what we term here a ''voucher''—in exchange for the cancellation of certain incumbent licenses at the end of the auction. Each voucher would have a dollar value equal to the final clock phase price (for a single generic block under the new band plan) in the PEA times the ratio of the incumbent's MHz-pops to the MHz-pops in a full generic block. We note that, by this definition, a participating incumbent licensee with a license for 100 megahertz of unencumbered spectrum in a PEA could receive a voucher precisely equal to the cost of paying a winning bid for a license for the same spectrum in the forward auction. Accordingly, participation in the clock auction by incumbent licensees will simultaneously be participation in the forward and reverse auction: The bids for new blocks in the forward auction automatically set the price of vouchers that participating incumbent licensees may receive as vouchers in the reverse auction. As the auction proceeds, the incumbent licensee can elect whether to pursue new licenses by placing new bids in the forward auction or to accept the voucher by requesting a reduction in its demand. Thus, the auction to determine the amount of the winning bid for the new blocks also serves as the reverse auction that determines the incentive payment a licensee would receive for voluntarily relinquishing spectrum usage rights.

11. Although incumbent licensees bidding in the auction would be free to request a reduction in their demand at any time during the auction based on their expectations regarding the value of their vouchers, the Commission itself would not process vouchers until after the clock auction is over. Provided that the total auction proceeds exceed the total incentive payments to be shared with licensees relinquishing spectrum usage rights, we can close the incentive auction regardless of the proceeds or relinquishments in a particular PEA. Then, the Commission would process vouchers for each incumbent licensee in each PEA in two steps, depending on whether all the spectrum made available in the reverse auction was needed for the forward auction. First, the Commission would determine whether demand at the end of the forward auction equaled supply in any given PEA; in those PEAs, the Commission would cancel the participating

accommodate coordination zones in the 37 GHz band for future Federal operations at a limited number of additional sites, and whether the coordination zones previously established in Section 30.205 might be reduced to better accommodate nearby non-Federal operations without adversely impacting Federal operations at those sites. *See Spectrum Frontiers 3rd FNPRM* at 30, para. 74; *Spectrum Frontiers R&O,* 31 FCC Rcd at 8070–71, para. 149.

incumbents' licenses and make payments based on the vouchers.[2]

12. In the event that demand by bidders in the forward auction in a PEA is less than the total supply of blocks offered, we need to address how to prioritize the blocks supplied by incumbent licensees relative to the supply of blocks that are held by the FCC in order to determine whether all incumbent-supplied blocks can be relinquished. That is, if bidders are interested in obtaining fewer new licenses than the total number of available blocks, which block or blocks will remain unsold—those partial or full blocks that an incumbent wishes to relinquish or those held by the FCC? For example, we could attempt to minimize payments to incumbent licensees by first satisfying demand with FCC-held blocks, and then, to the extent possible, with incumbent-offered blocks. If only some incumbent-held blocks can be used to satisfy demand, how should we prioritize among incumbent-held blocks? Should we use a pseudo-random number to break such ties, or should we prioritize blocks offered by incumbents in a different manner, such as allowing any incumbents with partial-PEA spectrum usage rights to relinquish before holders of full-PEA rights, so as to result in a repacked spectrum blocks that are more consistent with the new band plan? Alternatively, if we prioritized the reconfiguration of the band by first satisfying demand with incumbent-held supply, how should we prioritize which incumbent-held blocks to supply first? We note that, in situations where the demand for blocks does not exceed the total supply of blocks, the final clock phase price, at which incentive payments will be calculated, is likely to be equal to the minimum opening bid.

13. As a further encouragement for participation in the auction, we propose to condition bidding for new licenses in the auction on incumbents' offering their existing spectrum usage rights in the auction. In other words, an incumbent licensee seeking new licenses in the forward auction must be a participant in the simultaneous reverse auction. Such a requirement would ensure that incumbent licensees are not given a one-way option—purchasing new unencumbered spectrum at auction while keeping a different set of blocks encumbered and thus unavailable for an efficient auction.

14. One advantage of this approach is it maximizes the ability of incumbent licensees to maintain and consolidate their holdings (or to rationalize their holdings by relinquishing spectrum usage rights in some areas to acquire rights in other areas) while jointly maximizing the amount of clear, unencumbered spectrum for auction. Such an incentive auction appears to be the most efficient path forward to rationalize the Upper 37 GHz and 39 GHz bands for mobile 5G and high-speed fixed wireless service. It promotes a rapid transition of the currently fragmented band while at the same time respecting incumbent spectrum rights and providing opportunities for entry into the band by other wireless providers. We seek comment on these proposals and on alternative approaches to conducting, in a timely manner, an auction of licenses in the Upper 37 GHz and 39 GHz bands. We also seek comment on additional incentives we could provide for incumbent licensees to participate in the reverse auction.

15. A potential concern with the proposed auction is that incumbents with vouchers may have an incentive to engage in insincere bidding in markets where they want to be net suppliers of spectrum to inflate the value of their voucher payments. We seek comment on the validity of such concerns. We also note that these concerns should be mitigated by our no withdrawal rule, which we used in the forward phase of the broadcast incentive auction. We seek comment on any other potential safeguards that could be implemented against insincere bidding incentives or other strategic behavior in the proposed incentive auction.

16. Another potential concern is the interaction of vouchers and bidding credits. For example, given existing rural and small business bidding credits, bidders for new licenses may be eligible to receive up to a 25 percent credit toward their winning bid if they qualify. If that bidding credit were applied across their gross winning bids, an incumbent licensee could feasibly retain its existing holdings in the auction while simultaneously receiving an incentive payment.[3] To avoid that result, we propose to limit the application of bidding credits to cash payments for winning bids in the auction, after the winning bidder has used any vouchers it has to satisfy winning bids. We seek comment on this proposal and any other scenarios where the use of an incentive auction with vouchers may create arbitrage opportunities given our normal bidding rules. For example, should we address winning bidders that default on their payments differently here?

17. Given that non-incumbent licensees also may qualify for bidding credits, how should we address the theoretical possibility that auction proceeds could total less than the incentive payments owed to incumbents? Should we adopt a rule that would preclude the auction from closing in the event proceeds from winning bids will be insufficient, analogous to the final stage rule we adopted in the broadcast television spectrum incentive auction? Alternatively, should we adopt a rule to recalculate the amount of incentive payments, so that the payments do not exceed the available auction proceeds? We seek comment on these potential possibilities and how to address them. Are there other particular scenarios in which the auction proceeds might fall short of the amount needed to pay the face value of vouchers? Or other methods of addressing such possibilities?

18. We also seek comment on two alternative proposals. First, incumbents would receive license(s) for all vouchers that are equivalent to a whole number of new license(s) without bidding at all in the clock phase. The specific frequencies for these licenses would be assigned in the assignment round. Under this alternative, incumbent licenses that are not encumbered would not be able to relinquish spectrum, and in those PEAs, the total number of blocks offered in the clock phase would be reduced by the number of 100 megahertz licenses held by incumbents. In the assignment phase, all blocks won by winning bidders and all incumbent licenses would be assigned (or in the case of incumbent licenses, reassigned) frequencies.

19. A second, more narrowly tailored alternative would be to exchange automatically for vouchers only encumbered PEA and RSA licenses. Unencumbered PEA licenses would have the option of converting their unencumbered generic PEA blocks to vouchers if they so choose. All encumbered licenses would still be required to be converted to vouchers, since, were these licensees to hold out, this would leave spectrum that could not fit into the new band plan and

[2] For example, if an incumbent licensee had 150 megahertz of pre-auction spectrum throughout a PEA before the clock auction and won bids for two 100-megahertz blocks at $10,000 a block in a PEA where demand equaled supply at the end of the clock auction, that licensee's pre-auction spectrum licenses would be cancelled, it would receive a voucher of $15,000 (1.5 × $10,000) and it would owe $20,000 for the two winning bids (*i.e.,* it would be required to pay $5,000 net).

[3] For example, if a small business incumbent with one 100 megahertz PEA license before the auction won a single license in that same PEA for $10,000, its voucher would be $10,000 while its required payment on the one purchased license would be $7,500 ($10,000 times 75 percent).

thereby reduce the efficiency of the auction.

20. Under all these approaches, unencumbered PEA licensees can obtain new licenses without additional license payments. Under our proposed approach, however, licensees would have to bid to obtain a new license, making more licenses available for bidding and increasing the number of bidders. Making unencumbered PEA licensees bid may increase the efficiency of the assignment of licenses by having incumbents face the market price of holding onto their licenses. At a high enough price, some may relinquish their spectrum to other bidders who value it more highly. We seek comment on these proposals, particularly from any current licensee that would choose not to participate in the incentive auction using one of these three approaches described above or any other similar approach.

B. A Pre-Auction Voucher Exchange

21. To address concerns raised with respect to incumbent licensees whose licenses involve RSAs or encumbered PEAs, and thus do not cover the entire population of a PEA, we propose a pre-auction voucher exchange.[4] Much as vouchers in the incentive auction allow incumbent licensees to consolidate and rationalize their holdings during the auction, a voucher exchange could allow incumbents to consolidate and rationalize their holdings before the auction—although in a somewhat more limited manner. Specifically, it could aid incumbent licensees in minimizing the number of PEAs going into the auction in which they would have only fractional vouchers—and thus no ability to assure themselves that they could exit the auction with a whole number of new licenses without making net payments to secure their spectrum holdings.

22. The design of the voucher exchange should allow incumbents to exchange their fractional vouchers in one or more PEAs, caused by holding an RSA or encumbered PEA license, to create full vouchers in another PEA subject to certain restrictions. The first step in a voucher exchange is to aggregate the vouchers for all encumbered blocks within a PEA, which is likely to leave a fractional voucher in each PEA.

23. Next, the Commission would specify exchange rates (expressed on a per MHz-pop basis) that would allow incumbent licensees to exchange these fractional vouchers with the Commission. We seek comment on how to establish the relative exchange rates needed for a voucher exchange. Should we calculate those exchange rates based on the relative value of PEA licenses estimated from previous auctions? If so, which prior FCC auctions should be used to calculate the exchange rates between PEAs?

24. Incumbents would then be allowed to exchange their vouchers subject to the condition that net trades for each incumbent over all PEAs be revenue neutral, *i.e.,* aggregate trades up and down will balance given the FCC-specified exchange rates.[5] Vouchers could only be exchanged up or down to no more than the nearest integer above or no less than the nearest integer below their current fractional voucher holdings.[6] If there exists a PEA in which it is not feasible for all incumbent licensees to ''trade up'' within the 39 GHz band, we propose that incumbent licensees would only be permitted to ''trade down.'' All voucher trades with the Commission would be completed prior to the clock auction phase of the incentive auction. We propose that, before initiating the voucher exchange, we would educate all potential participants so that they can understand the process and consequences of participating in the exchange. We find that this should promote an efficient process for both the Commission and participants.

25. We seek comment on this framework for implementing a pre-auction voucher exchange to serve the public interest, including how best to address concerns raised in the record with respect to prior proposals. To establish the framework, we seek comment on the best methods for achieving our goals. How could a voucher exchange best facilitate a low cost rapid rationalization of spectrum holdings by allowing incumbent licensees to aggregate fractional holdings across PEAs and to retain all their equivalent spectrum usage rights in PEAs of their choosing to the extent permitted by their fractional holdings and the exchange rates? Are there any other limits or restrictions that should be imposed on exchanges that incumbents can make? Separate from the voucher exchange and building on the *Voluntary Rebanding PN,* should we expand the process by which incumbent licensees can modify their licenses prior to the auction, for example, by allowing for inter-market swaps using the same exchange rates as the voucher exchange?

26. One restriction we may impose on any exchange that will result in modified licenses (rather than cancelled licenses and vouchers for the auction) is to require that any such exchange result in less geographically encumbered spectrum. Would that serve the public interest? How should encumbrances be measured? Furthermore, after exchanging across a number of markets, it is likely that a licensee will not be able to have full PEA licenses in all markets. One approach to this remainder would be to set it to zero in that market. Would this be appropriate, given the opportunity afforded by the exchanges to minimize such holdings? What other approaches could be taken regarding such remainders? For example, should an incumbent be permitted to maintain one fractional license in one PEA?

27. We also seek comment on how the voucher exchange should interact with existing licenses and the incentive auction. For example, should we cancel or modify the affected licenses of exchange participants before the auction in exchange for vouchers? Should we leave such licenses untouched until after the auction? Should only incentive auction participants be allowed to participate in the voucher exchange? Further, should we consider holding this type of voucher exchange independent of whether we hold an incentive auction to allow incumbent licensees to combine their fractional licenses into whole licenses under the new band plan?

[4] For encumbered PEA licenses (*i.e.,* licenses that are co-channel with an RSA license), the licensee's voucher would cover only the population where it is authorized to operate prior to the start of the exchange—that is, the area outside of the overlapping RSA license.

[5] If all of an incumbent's licenses within PEA #1 in the aggregate cover 20% of the MHz-pops of an unencumbered 100 megahertz block in PEA #1, the license(s) are represented by a voucher denominated as 0.2. If all of an incumbent's licenses within a PEA #2 in the aggregate cover 40 percent of the MHz-pops of an unencumbered 100 megahertz block in PEA #2, that incumbent's voucher in PEA #2 would be 0.4. Note that the incumbent's license(s) in PEA #2 might cover 80 percent of the population in the PEA with only 50 megahertz of bandwidth, or 40 percent of the population with 100 megahertz, or 20 percent of the population with 200 megahertz. A voucher representing any of these combinations in PEA #2 would be denominated 0.4. If the exchange rate between PEA #1 and #2 was such that a voucher in PEA #2 can be exchanged for a voucher of two times its amount in PEA #1, then the incumbent could exchange its 0.4 voucher in PEA #2 for a PEA #1 voucher for 0.8 (0.4 times two). The incumbent would then combine its original 0.2 voucher in PEA #1 with the 0.8 voucher received in the exchange and have a 1.0 voucher in PEA #1. The incumbent's voucher in PEA #2 would then be 0.0.

[6] Using our prior example, the limitation that incumbents cannot increase vouchers to more than the nearest integer above its initial holdings means that an incumbent with 0.2 in PEA #1 and 0.9 in PEA #2 cannot exchange its PEA #2 voucher for a PEA #1 voucher of 1.8 (0.9 times the exchange rate of two) because the result would increase the incumbent's holdings in PEA #1 from 0.2 to 2.0, which is more than the nearest integer above, or 1.0.

C. Mandatory Repacking

28. We propose to repack incumbent licensees that choose not to participate in the incentive auction. Just as the Commission repacked television broadcasters that chose not to participate in the broadcast incentive auction, the Commission has the authority to modify the holdings of existing licensees ''if in the judgment of the Commission such action will promote the public interest, convenience, and necessity.'' Repacking the holdings of non-participating incumbent licensees will ensure that we can minimize encumbrances in the band and maximize the amount of clean spectrum available for auction, while preserving existing usage rights for incumbents.

29. We seek comment on all aspects of this proposal. We also seek comment on what criteria to apply when repacking encumbered licenses. How can the Commission best make modified frequency assignments to maximize the contiguous spectrum for auction participants while preserving to the greatest extent possible each incumbent license's bandwidth, previous geography, and existing contiguity?

30. For example, must or should we maintain frequency contiguity for RSA licenses that overlap PEAs? Given the requirement of operability throughout the band, how significant is such contiguity? We note that partitioning RSAs that overlap multiple PEAs into their respective PEAs might make it possible to repack more efficiently and even enable repacked frequencies to be assigned in the auction's assignment phase.

31. One approach to repacking non-participating incumbents would involve a two-step calculation. The first step would entail reconfiguring those incumbent licenses that do not align with PEA boundaries (*e.g.,* RSA licenses or partial PEA licenses) into full PEA licenses with an equivalent amount of spectrum in each PEA, as measured in MHz-pop. The second step would be to restate the incumbent's fractional holdings of 100 MHz PEA blocks as mostly integer numbers of 100 MHz PEA blocks, in a way that the repacked spectrum maintains the same value as evaluated with respect to FCC-specified exchange rates (*i.e.,* those set for the voucher exchange). In all but one of their PEAs, the fractional holdings of a repacked incumbent would be replaced by either the nearest integer above or the nearest integer below the fractional holdings. The one PEA left with fractional holdings would be the PEA with the smallest possible value. We note that an incumbent could avoid the effects of such repacking by entering into the incentive auction.

32. Other efficiencies might be realized by other means. For example, converting MHz-pops in a geographic area that is less than a full PEA (*i.e.,* an RSA license or an encumbered PEA license) into the same MHz-pops in a portion of a 100 megahertz block across the whole PEA could facilitate more efficient repacking. We note that, depending on how many and which current licensees choose not to participate in the incentive auction, there may be some left-over segments, *i.e.,* when less than a whole 100 megahertz PEA block remains. We seek comment on whether we should attempt to consolidate such holdout segments in this manner, and if so whether to auction overlay licenses on them or otherwise maximize their value for the American public.

33. We seek comment on the options presented above, including possible variations, and on the costs and benefits of mandatory repacking for non-participants. Should there be a *de minimis* spectrum holdings threshold to qualify for repacking and how should this level be set? How and when should the frequency reassignment be done in order to minimize the spectrum required to repack holdout licenses? How should the adjacent spectrum blocks to the holdout segment be auctioned, given that they may be less than 100 megahertz?

D. Incentive Auction Legal Authority

34. Congress expressly authorized the Commission to conduct incentive auctions beyond the broadcast television spectrum incentive auction. Using this authority, the Commission can offer incentive payments to licensees that choose to relinquish existing spectrum usage rights provided by incumbent licenses instead of retaining such rights pursuant to new licenses. More specifically, the ''Commission may encourage a licensee to relinquish voluntarily some or all of its licensed spectrum usage rights in order to permit the assignment of new initial licenses subject to flexible-use service rules by sharing with such licensee a portion . . . of the proceeds (including deposits and upfront payments from successful bidders) from the use of a competitive bidding system under this subsection.'' To do so, the Commission must determine ''the value of the relinquished rights . . . in the reverse auction'' and that reverse auction must have ''at least two competing licensees participate.''

35. As explained above, we propose to use the clock phase winning bids for new licenses to determine the incentive payment that participating incumbent licensees may receive. A participating incumbent licensee will have a choice between competing in bidding for new licenses and offering spectrum usage rights or relinquishing spectrum usage rights under existing licenses in exchange for an incentive payment.

36. Under the auction design proposed above, any relinquishment of spectrum usage rights for an incentive payment would be ''voluntary'' within the meaning of the statute. All incumbent licensees may decline to participate in the incentive auction and instead receive new licenses that provide spectrum usage rights equivalent to their existing licenses. Modifying existing licenses in this way does not, however, require the use of our incentive auction authority. Rather, we rely on our clear authority to modify license frequencies pursuant to the public interest. Given that incumbent licensees will participate in the incentive auction by choice, we conclude that any subsequent decision an incumbent doing so makes to relinquish spectrum usage rights should be considered voluntary. We seek comment on our conclusion.

37. We propose above that incumbent licensees that choose not to participate in the reverse auction may not participate in the auction of new licenses. Could that additional consequence of choosing not to participate affect whether a subsequent relinquishment is voluntary? An incumbent licensee that chooses between relinquishing spectrum usage rights for an incentive payment or instead receiving new licenses for equivalent spectrum usage rights at no additional cost presumably does so voluntarily, regardless of whether it chose to participate because of some collateral consequence of non-participation. Nothing compels such a licensee to make the relinquishment instead of retaining its spectrum usage rights under new licenses.

38. We also conclude that our proposal that incumbent licensees that choose not to participate in the reverse auction may not participate in the forward auction of new licenses is consistent with our authority to determine qualifications that auction participants must satisfy. More specifically, we conclude that the proposed consequence of an incumbent's choice would constitute a rule of general applicability regarding auction participation. We seek comment on these conclusions.

39. Our proposal satisfies additional statutory requirements for our incentive auction authority. The ''reverse'' nature of the auction required by the statute is one in which those rights are relinquished by licensees to the Commission, reversing the typical flow of rights assigned based on spectrum license auctions. Although auctions in other contexts—such as the Connect America Fund Phase II Auction to distribute universal service support for high-speed broadband deployment in rural America—are sometimes called reverse auctions because the price declines over the course of bidding, nothing in the statute requires that a reverse auction to relinquish spectrum usage rights use descending bidding. We note that in the broadcast television spectrum incentive auction, the Commission chose to use a descending clock price auction for the reverse auction component because a descending clock auction design involved several features that were particularly helpful in that context, not because it was statutorily required.

40. We also conclude that, so long as at least two incumbent licensees with licenses in the same PEA choose to participate in the incentive auction, the reverse auction will meet the statutory requirement to have at least ''two competing licensees participat[ing]'' in the reverse auction.[7] In the broadcast television spectrum incentive auction, the Commission concluded that at least two licensees participate in the reverse auction so long as more than one non-commonly controlled party qualifies as an applicant to participate in the auction. This is so because any qualified applicant that bids in the auction must take into account the presence of another qualified applicant that has the opportunity to bid, regardless of whether the second applicant in fact bids. We find that same conclusion should apply here, too. Incumbents seeking to relinquish spectrum usage rights in the proposed auction must take into account the demand for new licenses by other qualified applicants, as they only will be able to relinquish rights so long as demand for new licenses exceeds supply. We seek comment on this analysis.

41. Further, we seek comment generally on whether our proposal to conduct an auction with the elements described above or any of our alternative scenarios for conducting an incentive auction would be consistent with our statutory authority to conduct an incentive auction. To the extent that commenters assert that these scenarios are not consistent with our incentive auction authority, commenters should discuss any changes that could more fully satisfy that authority.

42. As noted above in our proposal, we have authority to modify the holdings of existing licensees based on our judgment of the public interest. We conclude that the potential modifications considered above are within our authority. We ask that commenters proposing further modifications to address whether their proposals are within our authority.

43. *Legal Authority for Alternative Auction Mechanisms.* We seek comment on alternative legal authority should we decide not to conduct an incentive auction. For example, we seek comment on whether we might conduct an auction as described above while providing current licensees with bidding offset credits in place of vouchers and incentive payments. We seek comment on whether issuing bidding offset credits in order to protect existing spectrum uses—and past Commission public interest judgments reflected in prior licensing decisions—while clearing existing spectrum assignments is necessary to the management of spectrum in the public interest and not inconsistent with the Communications Act. Effectively clearing prior spectrum assignments so that new licenses for this spectrum may be assigned by competitive bidding will promote statutory objectives. Issuing bidding offset credits is within the Commission's statutory authority regarding the design of competitive bidding systems. Section 309(j)(4) of the Communications Act grants the Commission authority to consider a variety of methods of helping entities pay for licenses that are offered at auction, including alternative payment schedules, tax credits, and bidding preferences.

44. We ask commenters to address the differences, if any, in incentives provided to current licensees by providing them with a bidding offset credit without an opportunity to receive an incentive payment. Commenters should address the likely differences in the outcome of the auction resulting from such different incentives, and whether providing incentive payments would better serve the public interest, notwithstanding the need to share a portion of the auction proceeds. Would the amount of repurposed spectrum be affected? We also seek comment on any other approaches that might achieve the purposes of the proposal without sharing proceeds from the auction of new licenses with existing licensees.

III. Initial Regulatory Flexibility Analysis

45. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the attached *4th FNPRM* . Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments as specified in the *4th FNPRM.* The Commission will send a copy of this *4th FNPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *4th FNPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

46. In the *4th FNPRM,* we propose to modify the band plan for the 38.6–40 GHz (39 GHz) band to 100 megahertz channels for the Part 30 Upper Microwave Flexible Use Service (UMFUS), and propose to similarly modify the 37.6–38.6 GHz (Upper 37 GHz) and 47.2–48.2 GHz (47 GHz) bands to 100 megahertz channels if we adopt the 100 megahertz channel plan for the 39 GHz band. The *4th FNPRM* also seeks comment on which auction mechanism to use to realign existing 39 GHz licenses.

47. First, we propose to modify the 39 GHz band plan from seven 200 megahertz to fourteen 100 megahertz channels to allow for better consolidation of existing license holdings. We propose modifying the Upper 37 GHz band plan from 200 megahertz to 100 megahertz channels, given that the two bands are adjacent and have the same service rules and an operability requirement. Further, in the *4th FNPRM* we propose to auction the 39 GHz and Upper 37 bands together. In addition we propose to modify the 47 GHz band plan from 200 to 100 megahertz channels if we auction all three bands at the same time and seek comment on that proposal.

48. Second, we propose to use a two-phase incentive auction. In the first phase, participants would bid to win generic spectrum blocks using an

[7] *See Incentive Auction Report and Order,* 29 FCC Rcd at 6742, para. 413. The Commission took care to note that it might ''apply [the two competing participants] requirement differently in other reverse auctions, depending upon the particular eligibility criteria, auction design and other circumstances.'' *Id.* at 6743, para. 414 n.1224. Accordingly, while we find the discussion regarding this requirement helpful, it is not controlling.

ascending clock auction that would determine a uniform price in each PEA—this encompasses the simultaneous forward-and-reverse auction. The second phase would assign specific-frequency licenses by PEA that would aim to ensure contiguity within each PEA. Because the spectrum blocks in the Upper 37 GHz and 39 GHz bands can be treated as largely interchangeable within a PEA, we propose to offer unencumbered blocks as one category of generic blocks in a clock auction. Specifically, we propose to use a clock auction design with rules similar to those used for the forward auction in the broadcast incentive auction and the planned 24 GHz auction. Next, winning bidders from the clock phase would have an opportunity to submit sealed bids by PEA for particular frequency blocks in a separate assignment phase. We propose that this assignment phase be voluntary: Winning bidders need not bid in the assignment phase. Regardless of its participation in the assignment phase, the assignment phase would aim to assign contiguous frequency blocks within a PEA to a bidder that wins multiple blocks.

49. We propose to encourage incumbent licensees to participate in the reverse auction by offering them an incentive payment—using what we term here a ''voucher''—in exchange for the cancellation of certain incumbent licenses at the end of the auction. Each voucher would have a dollar value equal to the final clock phase price (for a single generic block under the new band plan) in the PEA in which the incumbent license is located times the ratio of bandwidth provided by the incumbent's license and the population that can be reached using that license within a given PEA (expressed in MHz-pops) divided by the bandwidth and population reached by a generic block (expressed in MHz-pops). We propose to further encourage incumbent licensees to participate in the reverse auction by requiring such participation if the incumbent licensee seeks to participate in the accompanying forward auction. In addition, we seek comment on two alternative auction proposals. First, incumbents would receive license(s) for all vouchers that are equivalent to a whole number of new license(s) without bidding at all in the clock phase. In the assignment phase, all blocks won by winning bidders and all incumbent licenses would be assigned (or in the case of incumbent licenses, reassigned) frequencies. We seek comment on a second alternative in which we would exchange automatically for vouchers only encumbered PEA and RSA licenses.

50. Third, we propose a pre-auction voucher exchange process in which incumbents can trade fractional license holdings for full license holdings—including across markets in some circumstances—under the new band plan, with these trades reflected as full vouchers in the auction. The exchange would allow incumbents to aggregate fractional holdings across PEAs and to retain all their equivalent spectrum usage rights in PEAs of their choosing to the extent permitted by their fractional holdings and the exchange rates. We seek comment on establishing the relative exchange rates needed for a voucher exchange. We seek comment on a framework for implementing a pre-auction voucher exchange to serve the public interest, including how best to address concerns raised in the record with respect to prior proposals.

51. Fourth, we propose to repack incumbent licensees that choose not to participate in reverse auction portion of the incentive auction. Repacking the holdings of non-participating incumbent licensees will ensure that we can minimize encumbrances in the band, maximizing the amount of clean spectrum available for auction, while preserving existing usage rights for incumbents. We propose that licensees that choose to repack encumbered licenses in lieu of exchanging for vouchers should not be allowed to bid on new licenses in either the clock phase of the auction or be allowed to bid on frequency assignments during the assignment round. Prohibiting auction participation for such licensees would create a strong incentive for incumbents to choose to exchange all of their licenses for vouchers.

52. Lastly, we propose to auction together all licenses in the Upper 37 GHz and 39 GHz, using the Commission's incentive auction authority, where existing 39 GHz license holders could relinquish their spectrum usage rights in return for an incentive payment, and/or acquire new rights. We conclude that the auction design we propose would satisfy the requirement to conduct a reverse auction to determine the amount of compensation licensees would accept for voluntarily relinquishing spectrum usage rights. All incumbent licensees may decline to participate in the incentive auction and instead receive new licenses that provide spectrum usage rights equivalent to their existing licenses. We seek comment on our proposal to condition bidding for new licenses in the auction on incumbents' offering their existing spectrum usage rights in the auction. Such a requirement would ensure that incumbent licensees are not given a one-way option—purchasing new unencumbered spectrum at auction while keeping a different set of blocks encumbered and thus unavailable for an efficient auction. Furthermore, in case we were to conclude that the auction design proposed above would not satisfy the statutory requirements for an incentive auction, we seek comment on alternatives in which auction proceeds are not shared with incumbents, such as providing current licensees with bidding offset credits in place of vouchers

53. Overall, the proposals in the *4th FNPRM* are designed to facilitate broadband deployment, including 5G services, by providing opportunities to make it easier for licensees in the band to rationalize their existing holdings into contiguous swathes of spectrum, and by offering new licenses of contiguous spectrum at auction while protecting incumbents' existing spectrum usage rights. This will ensure that this spectrum is efficiently used and will foster the development of new and innovative technologies and services, as well as encourage the growth and development of a wide variety of services, ultimately leading to greater benefits to consumers.

B. Legal Basis

54. The proposed action is authorized pursuant to Sections 1, 2, 3, 4, 5, 7, 301, 302, 302a, 303, 304, 307, 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 153, 154, 155, 157, 301, 302, 302a, 303, 304, 307, 309, and 310, Section 706 of the Telecommunications Act of 1996, as amended, 47 U.S.C. 1302.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

55. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.'' A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

56. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States which translates to 28.8 million businesses.

57. Next, the type of small entity described as a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of August 2016, there were approximately 356,494 small organizations based on registration and tax data filed by nonprofits with the Internal Revenue Service (IRS).

58. Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data from the 2012 Census of Governments indicate that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 37,132 General purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,184 Special purpose governments (independent school districts and special districts) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of governments in the local government category show that the majority of these governments have populations of less than 50,000. Based on this data we estimate that at least 49,316 local government jurisdictions fall in the category of ''small governmental jurisdictions.''

59. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1,000 employees or more. Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities.

60. *Fixed Microwave Services.* Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. They also include the Upper Microwave Flexible Use Service, the Millimeter Wave Service, Local Multipoint Distribution Service (LMDS), the Digital Electronic Message Service (DEMS), and the 24 GHz Service, where licensees can choose between common carrier and non-common carrier status. At present, there are approximately 66,680 common carrier fixed licensees, 69,360 private and public safety operational-fixed licensees, 20,150 broadcast auxiliary radio licensees, 411 LMDS licenses, 33 24 GHz DEMS licenses, 777 39 GHz licenses, and five 24 GHz licensees, and 467 Millimeter Wave licenses in the microwave services. The Commission has not yet defined a small business with respect to microwave services. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite) and the appropriate size standard for this category under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2012 shows that there were 967 firms that operated for the entire year. Of this total, 955 had employment of 999 or fewer, and 12 firms had employment of 1,000 employees or more. Thus under this SBA category and the associated standard, the Commission estimates that the majority of fixed microwave service licensees can be considered small.

61. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 36,708 common carrier fixed licensees and up to 59,291 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies proposed herein. We note, however, that both the common carrier microwave fixed and the private operational microwave fixed licensee categories includes some large entities.

62. *All Other Telecommunications.* The ''All Other Telecommunications'' category is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing internet services or voice over internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.'' The SBA has developed a small business size standard for ''All Other Telecommunications,'' which consists of all such firms with gross annual receipts of $32.5 million or less. For this category, U.S. Census Bureau data for 2012 shows that there were a total of 1,442 firms that operated for the entire year. Of these firms, a total of 1400 firms had gross annual receipts of under $25 million and 42 firms had gross annual receipts of $25 million to $49,999,999. Thus, the Commission estimates that a majority of ''All Other Telecommunications'' firms potentially affected by our actions can be considered small.

63. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.'' The SBA has established a size standard for this industry of 1,250 employees or less. U.S. Census Bureau data for 2012 shows that 841 establishments operated in this industry in that year. Of that number, 828 establishments operated with fewer than 1,000 employees, 7 establishments operated with between 1,000 and 2,499 employees and 6 establishments

operated with 2,500 or more employees. Based on this data, we conclude that a majority of manufacturers in this industry is small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

64. We expect the rules and procedures proposed in the *4th FNPRM* will impose new or additional reporting or recordkeeping and/or other compliance obligations on small entities as well as other licensees with licenses in the 39 GHz band issued prior to the auction of new licenses proposed in the *4th FNPRM.* The proposed rules and procedures would require parties with licenses in the 39 GHz band issued prior to the auction of new licenses proposed in the *4th FNPRM* to provide certain information following the auction of the new licenses. Depending upon the licensee's individual circumstances, the information required may include directions regarding the cancellation of pre-existing licenses, directions regarding a choice between satisfying winning bids for new licenses and receiving incentive payments, and directions regarding how any incentive payments are to be made.

65. The projected reporting, recordkeeping, and other compliance requirements resulting from this proceeding would apply to all such licensees in the same manner. The Commission believes that applying the same rules equally to all entities in this context would promote fairness. We note that eight of the existing fourteen such licensees may be considered small entities. The Commission does not believe that the costs and/or administrative burdens associated with the rules would unduly burden small entities. Moreover, the proposed reverse auction would benefit any affected small entities by providing an opportunity to receive an incentive payment in exchange for spectrum usage rights.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

66. The RFA requires an agency to describe any significant alternatives for small businesses that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.

67. The Commission does not believe that its proposed changes will have a significant economic impact on small entities. We believe that modifying the band plan from 200 megahertz to 100 megahertz channels in the 39 GHz, Upper 37 GHz, and 47 GHz bands will help small entities by making spectrum available in smaller license sizes that may be more attractive to small entities. We also believe the proposed mechanism for auctioning the 39 GHz and Upper 37 GHz bands would facilitate access to spectrum by small businesses and a wide variety of other entities, while preserving incumbent licensees' spectrum rights. However, to get a better understanding of costs and any burdens, we seek comment on whether any of the burdens associated with the proposed rules and policies can be minimized for small businesses. The Commission expects to more fully consider the economic impact and alternatives for small entities following the review of comments filed in response to the *4th FNPRM.*

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

68. None.

IV. Ordering Clauses

69. *It is ordered*, pursuant to the authority found in Sections 1, 2, 3, 4, 5, 7, 301, 302, 303, 304, 307, 309, 310, and 316 of the Communications Act of 1934, 47 U.S.C. 151, 152, 153, 154, 155, 157, 301, 302, 303, 304, 307, 309, 310, and 316, and § 1.411 of the Commission's Rules, 47 CFR 1.411, that this *4th FNPRM is hereby adopted.*

70. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *4th FNPRM,* including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 30

Communications common carriers, Reporting and recordkeeping requirements, Communications equipment.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer, Office of the Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 30 as follows:

PART 30—UPPER MICROWAVE FLEXIBLE USE SERVICE

■ 1. The authority citation for part 30 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 303, 304, 307, 309, 310, 316, 332, 1302.

■ 2. Amend § 30.4 by:

■ a. Redesignating paragraphs (b) through (e) as paragraphs (c), (d), (f), and (g);

■ b. Adding and reserving new paragraphs (b) and (e); and

■ c. Revising redesignated paragraphs (d)(1), (f), and (g).

The revisions and addition read as follows:

§ 30.4 Frequencies.

* * * * *

(b) [Reserved]

* * * * *

(d) * * *

(1) New channel plan:

Channel No.	Frequency band limits (MHz)
1	38,600–38,700
2	38,700–38,800
3	38,800–38,900
4	38,900–39,000
5	39,000–39,100
6	39,100–39,200
7	39,200–39,300
8	39,300–39,400
9	39,400–39,500
10	39,500–39,600
11	39,600–39,700
12	39,700–39,800
13	39,800–39,900
14	39,900–40,000

* * * * *

(e) [Reserved]

(f) 37–38.6 GHz band: 37,600–37,700; 37,700–37,800 MHz; 37,800–37,900 MHz; 37,900–38,000 MHz; 38,000–38,100 MHz; 38,100–38,200 MHz; 38,200–38,300 MHz; 38,300–38,400 MHz; 38,400–38,500 MHz, and 38,500–38,600 MHz. The 37,000–37,600 MHz band segment shall be available on a site-specific, coordinated shared basis with eligible Federal entities.

(g) 47.2–48.2 GHz band—47.2–47.3 GHz; 47.3–47.4 GHz; 47.4–47.5 GHz; 47.5–47.6 GHz; 47.6–47.7 GHz; 47.7–47.8 GHz; 47.8–47.9 GHz; 47.9–48.0 GHz; 48.0–48.1 GHz; and 48.1–48.2 GHz.

[FR Doc. 2018–17820 Filed 8–17–18; 8:45 am]

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Notices

Federal Register

Vol. 83, No. 161

Monday, August 20, 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

Submission for OMB Review; Comment Request

August 15, 2018.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by September 19, 2018 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW, Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

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

Food Safety and Inspection Service

Title: Voluntary Recalls of Meat and Poultry Products.

OMB Control Number: 0583–0135.

Summary of Collection: The Food Safety and Inspection Service (FSIS) has been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*) These statutes mandate that FSIS protect the public by ensuring that meat and poultry products are safe, wholesome, unadulterated, and properly labeled and packaged. A firm that has produced or imported meat or poultry that is adulterated or misbranded and is being distributed in commerce, may voluntarily recall the product in question. When a firm voluntarily recalls a product, FSIS will conduct a recall effectiveness check.

Need and Use of the Information: In conducting a recall, the establishment will be asked to provide FSIS with some basic information, including the identity of the recalled product, the reason for the recall, and information about the distributors and customers of the product. FSIS will check on the effectiveness of the recall to ensure that all products subject to recall are accounted for. FSIS field personnel will use FSIS form 8400–4 A to determine (1) if the retail consignee received notification of the recall and (2) the amount of recalled products received. FSIS field personnel will also use FSIS form 8400–4 B to verify that product held by the retail consignee was properly disposed.

Description of Respondents: Business or other for-profit.

Number of Respondents: 6,090.

Frequency of Responses: Reporting: On Occasion.

Total Burden Hours: 6,600.

Food Safety and Inspection Service

Title: Requirements to Notify FSIS of Adulterated or Misbranded Product, Prepare and Maintain Written Recall Procedures, and Document Certain HACCP Reassessments.

OMB Control Number: 0583–0144.

Summary of Collection: The Food Safety and Inspection Service (FSIS) has been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*). These statutes mandate that FSIS protect the public by verifying that meat and poultry products are safe, wholesome, unadulterated, and properly labeled and packaged. Section 11017 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246, 112 Stat. 1651, 448–49), amended the FMIA and the PPIA by adding sections 12 and 13 to the FMIA and by amending section 10 of the PPIA (21 U.S.C. 459). These sections require official establishments that believe, they have shipped into commerce or received, misbranded, or adulterated products to notify the Secretary of Agriculture.

Need and Use of the Information: Official establishments are to document each time they reassess their HACCP plans and make the reassessments available to FSIS officials for review and copying. Official establishments are to notify the FSIS District Office that they have received or have shipped into commerce misbranded or adulterated product. The information collected will permit FSIS officials to monitor closely establishments HACCP plan reassessments and to facilitate recalls or adulterated or misbranded product.

Description of Respondents: Business or other for-profit.

Number of Respondents: 6,300.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 47,475.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2018–17881 Filed 8–17–18; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Study of School Food Authority (SFA) Procurement Practices

AGENCY: Food and Nutrition Service (FNS), United States Department of Agriculture (USDA).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This collection is a new information collection for the Study of School Food Authority (SFA) Procurement Practices. This study is intended to describe and assess the practices of SFAs related to procuring goods and services for school meal programs (*e.g.,* National School Lunch Program [NSLP], and the School Breakfast Program [SBP]), and to better understand how SFAs make decisions that lead to these procurement practices. The SFA Procurement Practices study will go beyond previous studies that concentrated on single food service or Child Nutrition programs (*e.g.,* NSLP, SBP, or the Summer Food Service Program [SFSP]) or studies that focused on single procurement practices (*e.g.,* use of Food Service Management Companies [FSMCs]) at the SFA level.

This collection includes a mixed-methods approach of qualitative and quantitative information utilizing a structured web-based survey, as well as in-depth interviews (IDIs) to be conducted by telephone. Data will be collected from a subsample of the SFA population participating in the second year of the Child Nutrition Program Operations Study-II (CN–OPS II) (OMB Number 0584–0607).

DATES: Written comments must be received on or before October 19, 2018.

ADDRESSES: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to: Ashley Chaifetz, Ph.D., Social Science Research Analyst, Special Nutrition Evaluation Branch, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Ashley Chaifetz at 703–305–2576 or via email to *Ashley.Chaifetz@fns.usda.gov*. Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov* and follow the online instructions for submitting comments electronically.

All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project, contact Ashley Chaifetz, Ph.D., Social Science Research Analyst, Special Nutrition Evaluation Branch, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, VA 22302; Fax: 703–305–2576; *Email: Ashley.Chaifetz@fns.usda.gov*.

SUPPLEMENTARY INFORMATION:

Title: Study of School Food Authority (SFA) Procurement Practices (SFA Procurement Practices Study).

Form Number: N/A.

OMB Number: Not yet assigned.

Expiration Date: Not yet determined.

Type of Request: New collection.

Abstract: The SFA Procurement Practices Study will describe and evaluate the decision-making processes of SFAs regarding school food procurement practices. Using a nationally representative sample of SFAs, this study will be one of the first FNS studies of SFA procurement practices for school meal programs to comprehensively examine food service management companies, group purchasing agreements, recordkeeping, local food purchases, and food purchase specifications.

The Richard B. Russell National School Lunch Act and Child Nutrition Act provide the legislative authority for the NSLP and the SBP. FNS administers the NSLP and the SBP at the Federal level, in addition to other meal programs at schools, including the SFSP, Child and Adult Care Food Program (CACFP), and Special Milk Program for Children (SMP). At the State level, school meal programs are administered by State agencies (typically State Departments of Education or Agriculture). Approximately 20,000 SFAs, which can consist of a school, school district, or multiple districts, are responsible for administering and ensuring eligibility is met for the school meal programs, including procurement. School food procurement consists mainly of commercial food purchases, but USDA Foods also make up a portion of the items purchased. For each meal served by the NSLP, the SFA receives entitlement dollars to purchase USDA Foods, which can include purchasing items directly from the USDA or diverting bulk ingredients for further processing. SFAs can also use their entitlement dollars to purchase fresh produce from the USDA Department of Defense Fresh Fruit and Vegetable program (USDA DoD Fresh) or the Fresh Fruit and Vegetable Program (FFVP). Additionally, some SFAs contract with an FSMC to manage on-site operations, including procurement; others enter into group purchasing agreements or use procurement methods such as small and micro-purchases.

The objectives of the study include the following:

- Identify and describe the means through which self-operating SFAs develop and publish solicitations, evaluate and award contracts, and monitor procurement contracts for all school food purchases.
- Identify and describe the rationale, procedures, and recordkeeping practices used by SFAs with respect to their contracts with FSMCs.
- Identify and describe the forms of cooperative purchasing arrangements SFAs use to purchase food products and services.
- Assess the strengths and weaknesses of SFAs with respect to procurement-related expertise in developing solicitation and contract documents, evaluating bids/responses, negotiating terms and conditions, and assessing the availability of State agency-provided technical assistance and training resources.

The SFA Procurement Practices Study will assist FNS to better understand SFA procurement practices by identifying the ways SFAs make decisions about procuring goods and services and the outcomes of such decisions.

The activities to be undertaken subject to this notice include (1) conducting a structured web survey of approximately 560 SFA Child Nutrition Directors, and (2) conducting in-depth interviews with 100 SFA Child Nutrition Directors, a subsample of the

560 SFA Child Nutrition Directors that completed the structured web survey.

The original 60-Day Notice for this study was published in the **Federal Register** on May 30, 2017. Although the information collection request for the Study of SFA Procurement Practices was submitted to the Office of Management and Budget for review, it was not submitted within a year of the publication of the notice. Due to this, FNS is republishing the 60-Day Notice for comment.

Affected Public: State, Local, and Tribal Governments.

Type of Respondents: SFA Child Nutrition Directors.

Estimated Total Number of Respondents: The estimated total number of unique respondents is 760. This figure includes 620 respondents and 140 non-respondents, as well as pretest respondents and State agency contacts. The estimated total number of participants for the web survey is 700 (560 respondents and 140 non-respondents at a response rate of 80 percent). The estimated total number of participants for the in-depth interviews is 125 (100 respondents and 25 non-respondents at a response rate of 80 percent).

Estimated Frequency of Responses per Respondent: Respondents (SFA Child Nutrition Directors) will be asked to complete each data collection instrument (web survey and IDI) no more than one time. Respondents may be asked to respond to only the web survey or to both the web survey and the IDI. FNS estimates that respondents will average 7.6 responses (5,813/760) across the entire collection, with respondents averaging 6.1 responses (3,779/620) and non- respondents averaging 14.53 responses (2,034/140).

For the web survey, all 700 potential respondents will receive a pre-survey notification letter, a Frequently Asked Questions document, and a pre-survey notification email. These materials will explain the study and survey, and encourage and remind the respondent to complete the survey. During the data collection period, a first reminder email will be sent to an estimated 350 potential respondents who, at that point in time, have yet to complete the web survey. Later in the data collection period, a second reminder email will be sent to an estimated 247 potential respondents who, at that point in time, have yet to complete the web survey. An estimated 175 potential respondents will receive a phone call with a reminder to complete the web survey. Upon completion of the web survey data collection period, the estimated 56 respondents will receive a post-survey response clarification communication and an estimated 11 of these respondents will receive a clarification phone call. Thank you emails will be sent to the estimated 560 respondents who were sent a response clarification email. Respondents that received a response clarification phone call will be thanked for their participation in the survey at the end of the call.

For the in-depth interviews, 125 of the estimated 560 respondents to the web survey will receive a pre-interview notification letter and will include the Frequently Asked Questions document that they received prior to the web survey. These materials will explain the purpose of the interview and why they were chosen for the interview, and will encourage them to participate. Next, each of the 125 potential interviewees will receive a pre-interview scheduling phone call. The purpose of the call will be to further encourage their participation and to schedule the interview. A reminder email will be sent to and a second pre-interview scheduling phone call will be attempted with an estimated 50 potential respondents who, at that point in time, have yet to schedule an interview. After the scheduling calls, the estimated 100 respondents who agree to and schedule an interview will be sent a participant confirmation email. At the completion of the interview, the respondents will be thanked for their participation; thank you emails will be sent out after the interview.

Estimated Total Annual Responses: The estimated total number of responses across all categories is 5,813. This includes 3,779 for respondents and 2,034 for non-respondents.

Estimate of Time per Response per Respondent: The estimated time per response for all respondents is 13.09 minutes (1,268.47 hours/5,813 responses). That total includes the estimated time per response for respondents of 19.16 minutes (1,207.01 hours/3,779 responses) and the estimated time per response for non-respondents of 1.81 minutes (61.46 hours/2,034 responses).

Estimated Total Annual Burden Hours on Respondents: The estimated total annual burden hours expected across all respondents is 1,268.47 hours. The estimated burden for each type of response is given in the table below (Exhibit 1).

Dated: August 10, 2018.

Brandon Lipps,

Administrator, Food and Nutrition Service.

BILLING CODE 3410–30–P

Exhibit 1. Estimated Number of Respondents, Non-Respondents, and Hours of Burden

Affected Public	Respondent Type	Data Collection Activity	Original Sample Size	Responsive					Non-Responsive					Estimated Total Annual Hour Burden
				Estimated Number of Respondents	Frequency of Response	Estimated Total Annual Responses	Hours Per Response	Estimated Annual Burden (Hours)	Estimated Number of Non-Respondents	Frequency of Response	Estimated Total Annual Non-Responses	Hours Per Non-Response	Estimated Annual Burden (Hours)	
State Government	State Agencies	Email Notification from Regional Offices to State Child Nutrition Directors	51	51	1	51	0.05	2.55	0	0	0	0.00	0.00	2.55
		Email Notification to State Child Nutrition Directors	51	51	1	51	0.05	2.55	0	0	0	0.00	0.00	2.55
Local Government	SFA Directors	Pretesting (Web Survey)	9	9	1	9	2.00	18.00	0	0	0	0.00	0.00	18.00
		Pretesting (In-Depth Interview)	8	8	1	8	2.00	16.00	0	0	0	0.00	0.00	16.00
		Email Notification to School Food Authority Directors	700	560	1	560	0.05	28.00	140	1	140	0.02	2.80	30.80
		SFA Procurement Practices Web Survey (Data Collection)	700	560	1	560	1.50	840.00	140	1	140	0.04	5.60	845.60
		Pre-Survey Notification Letter (Web Survey)	700	350	1	350	0.07	24.50	350	1	350	0.04	14.00	38.50
		Survey Notification Email (Web Survey with Link)	700	350	1	350	0.05	17.50	350	1	350	0.03	10.50	28.00
		Survey Reminder Email 1 (Web Survey with Link)	350	103	1	103	0.05	5.15	247	1	247	0.03	7.41	12.56
		Survey Reminder Email 2 (Web Survey with Link)	247	72	1	72	0.05	3.60	175	1	175	0.03	5.25	8.85
		SFA Director Telephone Reminder Script (Web Survey)	175	35	1	35	0.08	2.80	140	1	140	0.01	1.40	4.20
		Study of School Food Authority (SFA) Procurement Practices: Frequently Asked Questions – Web Survey and In-Depth Interview	700	448	1	448	0.08	35.84	252	1	252	0.04	10.08	45.92
		Post-Survey Response Clarification Email (Web Survey)	56	45	1	45	0.05	2.25	11	1	11	0.02	0.22	2.47
		Post-Survey Response Clarification Phone Call Script (Web Survey)	11	9	1	9	0.08	0.72	2	1	2	0.04	0.08	0.80
		Post-Survey Thank You Email (Web Survey)	560	560	1	560	0.05	28.00	0	0	0	0.01	0.00	28.00
		SFA Procurement Practices In-Depth Interview Guide (Data Collection)	125	100	1	100	1.50	150.00	25	1	25	0.04	1.00	151.00
		Pre-Interview Notification Letter (In-Depth Interview)	125	100	1	100	0.07	7.00	25	1	25	0.04	1.00	8.00
		Study of School Food Authority (SFA) Procurement Practices: Frequently Asked Questions – In-Depth Interview	125	80	1	80	0.08	6.40	45	1	45	0.01	0.45	6.85
		Pre-Interview Scheduling Phone Call Script (In-Depth Interview), first attempt	125	75	1	75	0.07	5.25	50	1	50	0.01	0.50	5.75
		Pre-Interview Reminder Email (In-Depth Interview)	50	17	1	17	0.05	0.85	33	1	33	0.02	0.66	1.51
		Pre-Interview Scheduling Phone Call Script (In-Depth Interview), second attempt	33	8	1	8	0.07	0.56	25	1	25	0.01	0.25	0.81
		Participant Confirmation Email (In-Depth Interview)	100	100	1	100	0.05	5.00	0	0	0	0.00	0.00	5.00
		Post-Interview Response Clarification Email (In-Depth Interview)	10	8	1	8	0.05	0.40	2	1	2	0.01	0.02	0.42
		Post-Interview Response Clarification Phone Call Script (In-Depth Interview)	2	1	1	1	0.08	0.08	1	1	1	0.04	0.04	0.12
		Thank You Email for Participation in Study	100	80	1	80	0.05	4.00	20	1	20	0.01	0.20	4.20
Total Burden (State/Local Government only)			**760**	**620**	**6.10**	**3,779**	**0.32**	**1,207.01**	**140**	**14.53**	**2,034**	**0.03**	**61.46**	**1,268.47**

[FR Doc. 2018–17840 Filed 8–17–18; 8:45 am]
BILLING CODE 3410–30–C

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Special Milk Program for Children

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

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this information collection. This collection is a revision of a currently approved collection which FNS employs to determine public participation in Special Milk Program for Children.

DATES: Written comments must be received on or before October 19, 2018.

ADDRESSES: Comments may be sent to: Tina Namian, School Programs Branch, Policy and Program Development Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 1206, Alexandria, VA 22302–1594. Comments may also be submitted via fax to the attention of Tina Namian at 703–305–6294 or via email to *cndinternet@fns.usda.gov*. Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically. All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Tina Namian at 703–305–2590.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title: 7 CFR part 215, Special Milk Program for Children.

Form Number: FNS–10 and FNS–777.

OMB Number: 0584–0005.

Expiration Date: January 31, 2019.

Type of Request: Revision of a currently approved collection.

Abstract: Section 3 of the Child Nutrition Act (CNA) of 1966, (42 U.S.C. 1772) authorizes the Special Milk Program (SMP). It provides for the appropriation of such sums as may be necessary to enable the Secretary of Agriculture to encourage the consumption of fluid milk by children in the United States in: (1) Nonprofit schools of high school grade and under; and (2) nonprofit nursery schools, child care centers, settlement houses, summer camps, and similar nonprofit institutions devoted to the care and training of children, which do not participate in a food service program authorized under the CNA or the National School Lunch Act.

Section 10 of the CNA (42 U.S.C. 1779) requires the Secretary of Agriculture to prescribe such regulations as deemed necessary to carry out this Act and the National School Lunch Act. Pursuant to that provision, the Secretary has issued 7 CFR part 215, which sets forth policies and procedures for the administration and operation of the SMP. State and local operators of the SMP are required to meet Federal reporting and accountability requirements. This information collection is required to administer and operate this program. The Program is administered at the State, school food authority (SFA), and child care institution levels; and operations include the submission of applications and agreements, submission and payment of claims, and maintenance of records. The reporting and record keeping burden associated with this revision has decreased from 14,914 hours to 13,325 hours. These changes are due to decreases in the number of participating institutions. All of the reporting and recordkeeping requirements associated with the SMP are currently approved by the Office of Management and Budget and are in force. This is a revision of the currently approved information collection.

Forms FNS–10 and FNS–777 collect information that are associated with this information collection; however, these forms are approved under another FNS information collection. Forms FNS–10 and FNS–777 are used by the State agencies to report program data. These forms, and the reporting burden associated with them, are approved under OMB# 0584–0594 Food Programs Reporting System (FPRS) (expiration date 9/30/19). The recordkeeping burden associated with these forms is covered in this collection.

Affected Public: State, Local, and Tribal Government (State agencies) and Non-profit Institutions.

Number of Respondents: 3,499 (54 State Agencies, 3,445 Non-profit Institutions).

Estimated Number of Responses per Respondent (Reporting): 1.35.

Total Annual Responses (Reporting): 4,741.

Reporting time per Response (Reporting): .25.

Estimated Annual Reporting Burden: 1,185.

Number of Recordkeepers: 3,499 (54 State Agencies, 3,445 Non-profit Institutions).

Estimated Number of Responses per Respondent (Recordkeeping): 23.91.

Estimated Total Number of Records to Keep: 83,666.

Estimated Time per Response (Recordkeeping): 0.15.

Total Estimated Recordkeeping Burden: 12,140.

Total Annual Responses for Reporting/Recordkeeping: 88,407.

Annual Recordkeeping and Reporting Burden: 13,325.

Current OMB Inventory for Part 215: 14,914.

Difference (change in burden with this renewal): −1,589.

Refer to Table 1 below for estimated total annual burden for each type of respondent.

Dated: August 10, 2018.

Brandon Lipps,

Administrator, Food and Nutrition Service.

TABLE 1—ESTIMATED TOTAL ANNUAL BURDEN FOR EACH TYPE OF RESPONDENT

Affected public	Estimated number of respondents	Number of responses per respondent	Total annual responses	Est. total hours per response	Estimated total burden
Reporting					
State agencies	54	24	1,296	0.25	324
Non-profit Institutions	3,445	1	3,445	0.25	861
Total Estimated Reporting Burden	3,499	1.35	4,741	0.25	1,185
Recordkeeping					
State agencies	54	861.8	46,537	0.10	4,714
Non-profit Institutions	3,445	10.78	[1] 37,129	0.20	7,426
Total Estimated Recordkeeping Burden	3,499	[2] 23.91	83,666	0.15	12,140
Total Reporting and Recordkeeping					
Reporting	3,499	1.35	4,741	0.25	1,185
Recordkeeping	3,499	23.91	83,666	0.15	12,140
Total	3,499	25.27	88,407	0.15	13,325

[1] Certain procurement requirements only apply to the 2,679 school food authorities and residential child care institutions participating in the Special Milk Program.
[2] Rounded from 23.91146.

[FR Doc. 2018–17841 Filed 8–17–18; 8:45 am]
BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Willamette National Forest, McKenzie River Ranger District; Oregon; Flat Country Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Flat Country Project is located on the western slope of the Cascades, extending from Scott Mountain to the upper reach of the McKenzie River, eight miles east of McKenzie Bridge, Oregon. The project area is approximately 74,063 acres. There is a high amount of mid-seral stands, moving the seral distribution away from historic levels and limiting stand structure and species diversity across the landscape. This project proposes to thin, reduce the number of trees, and increase the size and structure of the remaining forest over time. Activities proposed include forest management treatments across approximately 5,001 acres, including forest thinning (including riparian reserve thinning) and regenerating harvests. Additional proposed activities would include road work (including maintenance, reconstruction, temporary road construction, and decommissioning), and meadow enhancements.

DATES: Comments concerning the scope of the analysis must be received by September 19, 2018. The draft environmental impact statement is expected March 2019 and the final environmental impact statement is expected August 2019.

ADDRESSES: Scoping comments can be submitted electronically through *https://cara.ecosystem-management.org/Public//CommentInput?Project=53966.* You may also submit written comments via mail or by hand delivery to Darren Cross, District Ranger, McKenzie Bridge Ranger District, 57600 McKenzie Hwy., McKenzie Bridge, OR 97413; or via facsimile to 541–822–7254.

FOR FURTHER INFORMATION CONTACT: Dean Schlichting (Project Team Leader) at *deandschlichting@fs.fed.us,* 541–822–7214.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

This project was originally an environmental assessment and was scoped from May 22 to June 23, 2018. Scoping comments were received on a range of concerns and topics. Primary concerns included: Providing a sustainable supply of timber products for local industry, reasons for and against road construction, preserving and impacting northern spotted owl habitat, no logging of mature forests, encouraging the creation of early seral habitat, and alerting the recreating public of operation schedules and haul routes to avoid conflict. After the review of the project and due to the complexity and size of this project, as well as public input, the decision was made to elevate the analysis to an environmental impact statement.

Purpose and Need for Action

The Flat Country Project is proposed to provide a sustainable supply of timber products, actively manage stands to improve stand conditions (density, diversity, and structure), increase vegetative habitat complexity and hardwood composition along streams, and sustainably manage the network of road systems in the project area. Within the project area trees are competing for sunlight, water and nutrients causing reduced tree growth and vigor. The productivity and site conditions of forests in the project area allow for the production of forest products while being sensitive to the ecology of the area and meeting other important natural values and services.

Proposed Action

The proposed action has multiple facets:

(1) Commercially harvest about 5,001 acres (3.7% of the Project Area) and regenerate roughly 962 acres (1.0% of the Project Area). We propose to use thinning across the majority of the project and these treatments would incorporate some untreated areas (skips) and create gaps of up to three acres with variable spacing of remaining trees. We

would design the regeneration harvest to increase forest-age diversity across the project area. The type of regeneration harvests would vary and may potentially include: Shelterwood harvests, two-aged systems, group selection harvests, variable retention harvests, and seed tree harvests. The age of stands proposed for treatment range from 29 to 150 years.

(2) Thin and treat fuels on approximately 767 acres of riparian reserves outside of riparian buffers to accelerate and/or improve Aquatic Conservation Strategy Objectives (ACSOs). Additional riparian reserve treatments could occur on up to 50 acres within buffers, including diversity thinning in plantations, wood placement in creeks and cutting and leaving conifers in areas of hardwoods to encourage hardwood growth. All treatments will be designed to accelerate and/or improve ACSOs.

(3) Maintain or reconstruct approximately 146 miles of road, including installation of approximately 200 culverts (primarily replacements).

(4) Decommission and hydrologically stabilize approximately 11 miles of road.

(5) Construct 16 miles of temporary roads; temporary roads would be restored to their previous function and closed after all project activities are completed.

(6) Create fuel breaks along forest roads. Treatments would occur along approximate 57 miles of road and range from 33 to 66 feet wide which would equate to about 2597 acres.

(7) Enhance dry and wet meadow habitats on approximately 368 acres, which includes a combination of tree removal and broadcast burning.

(8) Reduce hazardous fuels on both existing fuel loadings and logging slash as a result of harvest to bring stands to levels within Forest Plan standards and guidelines. Proposed treatments include broadcast or under-burning, machine piling, burning of landings, hand piling and chipping.

Possible Alternatives

Due to the responses we received from the initial scoping, there is at least one other action alternative that may be considered. One commentor suggested the Forest Service consider alternatives that avoid logging mature forests. The district will develop an alternative that harvests only in previously managed stands under 80 years old (Alternative 3).

Responsible Official

McKenzie River District Ranger.

Nature of Decision To Be Made

Given the purpose and need, the scope of the decision to be made by the responsible official will be as follows: Do the proposed actions comply with all applicable laws governing Forest Service actions and with the applicable standards and guidelines found in the Willamette Land and Resource Management Plan (LRMP)? Does the Environmental Impact Statement have sufficient site-specific environmental analysis to make an informed decision? Do the proposed actions meet the purpose and need for action? With these assurances the responsible official must decide: Whether or not to select the proposed action or one of any other potential alternatives that may be developed, and what, if any, additional actions should be required.

Scoping Process

This notice of intent begins the formal scoping process, which guides the development of the environmental impact statement. It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

We are interested in your comments on the following questions: Are there alternative ways to meet the purpose of the project other than the proposed action we offer, which you would like the Forest Service to consider and analyze? Is there any information about the project area, which you believe is important in the context of the proposed activities that you would like the Forest Service to consider? What specifically are the potential effects of this proposal that you are particularly concerned about? For example, rather than simply stating that you would like a change in a proposed activity or that you would not like an activity to take place, it is most helpful to understand why you desire this. What are your underlying concerns with an activity or action; what are the effects from the activity that concern you?

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however, anonymous comments will not provide the Agency with the ability to provide the respondent with subsequent environmental documents.

Dated: July 26, 2018.

Chris French,

Associate Deputy Chief, National Forest System.

[FR Doc. 2018–17837 Filed 8–17–18; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Comprehensive River Management Plan for Black Butte Wild and Scenic River, Including Portions of Cold Creek, Mendocino National Forest, Mendocino County, California

AGENCY: Forest Service, USDA.

ACTION: Notice of availability.

SUMMARY: In accordance with Section 3(d)(1) of the Wild and Scenic Rivers Act, the USDA Forest Service announces the completion and availability of the comprehensive river management plan for Black Butte Wild and Scenic River, including portions of Cold Creek. On May 11, 2018, Acting Mendocino Forest Supervisor, Gar Abbas signed a decision notice to adopt a comprehensive river management plan (''CRMP'') for Black Butte Wild and Scenic River (including Cold Creek). The Black Butte Wild and Scenic River CRMP (including Cold Creek) addresses resource protection, development of lands and facilities, user capacities, and other management practices necessary or desirable to achieve the purposes of the Wild and Scenic Rivers Act. This CRMP was prepared after consultation with State and local governments and the interested public. An environmental assessment (EA) was prepared as part of the CRMP development. This EA has been prepared in compliance with the National Environmental Policy Act and other relevant federal laws and regulations. The EA discloses the direct, indirect, and cumulative environmental effects that would result from adopting the CRMP.

The Black Butte Wild and Scenic River CRMP (including Cold Creek) and the EA are available for review at *https://www.fs.usda.gov/project/?project=50351* and the following offices: Upper Lake Ranger District, 10025 Elk Mountain Road, Upper Lake, CA 95484. Mendocino National Forest Supervisor's Office, 825 N Humboldt Ave., Willows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Information may be obtained by contacting Hilda Kwan, District Hydrologist, Mendocino National

Forest, 10025 Elk Mountain Road, Upper Lake, CA 95484, 707–275–1413, or at *hkwan@fs.fed.us.*

Dated: July 30, 2018.

Chris French,

Associate Deputy Chief, National Forest System.

[FR Doc. 2018–17839 Filed 8–17–18; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Rural Housing Service

Rural Utilities Service

Notice of Request for Revision of a Currently Approved Information Collection

AGENCY: Rural Business-Cooperative Service, Rural Housing Service, Rural Utilities Service, U.S. Dept. Of Agriculture, (USDA).

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the USDA Rural Development intention to request a revision for a currently approved information collection under Section 6025, Strategic Economic and Community Development (SECD), under the Agricultural Act of 2014 (2014 Farm Bill).

DATES: Comments on this notice must be received by October 19, 2018 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Angela M. Callie, USDA Rural Development, Innovation Center, U.S. Department of Agriculture, 1400 Independence Ave. SW, Washington, DC 20250 [202–568–9738, FAX Fax: 855–742–4168].

SUPPLEMENTARY INFORMATION:

Title: Strategic Economic and Community Development, SECD—Section 6025.

OMB Number: 0570–0068.

Expiration Date of Approval: Dec 31, 2018.

Type of Request: Revision of a currently approved information collection.

Abstract: As authorized under Section 6025 of the Agricultural Act of 2014 (2014 Farm Bill), the Strategic Economic and Community Development program provides the Secretary of Agriculture the authority to give priority to projects that support strategic economic development or community development plans. The programs from which funds will be prioritized include community facility programs, water and waste disposal programs, and rural business and cooperative development programs.

This collection of information is necessary for the Agency to identify projects eligible for priority under the Section 6025 Program. In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35), the Agency is submitting this information collection package to the Office of Management and Budget (OMB) for review and clearance to implement the Section 6025 Program.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 9 hours per response.

Respondents: Municipalities, Authorities, nonprofits, Lenders, businesses.

Estimated Number of Respondents: 374.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 3,348 hours.

Comments: Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Jeanne Jacobs, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Avenue SW, Washington, DC 20250–0742. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: August 10, 2018.

Bette Brand,

Administrator, Rural Business Service.

Dated: August 14, 2018.

Joel Baxley,

Administrator, Rural Housing Service.

Dated: August 14, 2018.

Kenneth Johnson,

Administrator, Rural Utilities Service.

[FR Doc. 2018–17897 Filed 8–17–18; 8:45 am]

BILLING CODE 3410–XY–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Tennessee Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice 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 Tennessee Advisory Committee will hold a meeting on Wednesday, September 12, 2018, 12:30 p.m. EST to discuss proposal topic on legal financial obligations and civil rights issues.

DATES: The meeting will be held on Wednesday, September 12, 2018, 12:30 p.m. EST.

FOR FURTHER INFORMATION CONTACT: Jeff Hinton, DFO, at *jhinton@usccr.gov.*

SUPPLEMENTARY INFORMATION: *Public Call Information:* The meeting will be by teleconference. Toll-free call-in number: 877–260–1479, conference ID: 7992130.

Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number: 877–260–1479, conference ID: 7992130. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Written comments may be mailed to the Regional Program Unit Office, U.S. Commission on Civil Rights, 230 S Dearborn, Suite 2120, Chicago, IL 60604. They may also be faxed to the Commission at (312) 353–8324 or may

be emailed to the Regional Director, Jeff Hinton at *jhinton@usccr.gov.* Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Tennessee Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Southern Regional Office at the above email or street address.

Agenda

Welcome and Call to Order
  Diane DiIanni, Tennessee SAC Chairman
  Jeff Hinton, Regional Director
Regional Update—Jeff Hinton
New Business: Diane DiIanni, Tennessee SAC Chairman/Staff/Advisory Committee Public Participation
Adjournment

Dated: August 15, 2018.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2018–17883 Filed 8–17–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–50–2018]

Foreign-Trade Zone (FTZ) 41—Milwaukee, Wisconsin; Notification of Proposed Production Activity; Generac Power Systems, Inc.; (Outdoor Power, Pumps, and Lawn and Garden Equipment); Jefferson and Whitewater, Wisconsin

Generac Power Systems, Inc. (Generac) submitted a notification of proposed production activity to the FTZ Board for its facilities in Jefferson and Whitewater, Wisconsin. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on August 6, 2018.

Generac already has authority to produce generators, pressure washers, engines and related components within Subzone 41J. The current request would add finished products and foreign status materials/components to the scope of authority. Pursuant to 15 CFR 400.14(b), additional FTZ authority would be limited to the specific foreign-status materials/components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Generac from customs duty payments on the foreign-status materials/components used in export production. On its domestic sales, for the foreign-status materials/components noted below and in the existing scope of authority, Generac would be able to choose the duty rates during customs entry procedures that apply to burn cages (for yard debris); steel hot air distributors; firewood racks; earth boring tools; diaphragm pumps; reciprocating positive displacement pumps; rotary positive displacement pumps; centrifugal pumps; single stage pumps with discharge outlet; leaf blowers; electric power graders; trenchers; backhoes; snow blower attachments; snow blowers; power trenchers; ground graders; grade blades; front end loader forks; backhoe attachments; tillers; leaf and lawn vacuums; electric rotary mowers; rotary mowers; self-propelled mowers gas powered; pull behind rotary mowers; pull behind mowers non-rotary; field and brush mowers/trimmers; stump grinders-forest machinery; portable sawmill machines; log splitters; chippers; chain saws; electric trimmers; electric fence trimmers; earth augers; gas power trimmers; portable outdoor heaters; transfer switch panels; self-propelled wheelbarrows; light towers; and, power brush attachments (duty rates range from duty free to 6%). Generac would be able to avoid duty on foreign-status components which become scrap/waste. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The materials/components sourced from abroad include: Wash preparations/agents; cleaning preparations/agents; monofilament trimmer cord; polyurethane foam insulation; plastic covers for outdoor equipment; plastic handles/knobs; plastic washers; plastic shrouds for generators; molded plastic buckets; molded rubber housings/bushings; inner tubes; plywood packaging cases or boxes for shipping; rough cut wood posts and rails for packaging; packing paper for shipping; cardboard cartons; printed warranty cards; disposable textile bag liners (for outdoor power equipment); carbon fiber covers for lawn and garden equipment; stainless rope/cable with fittings; iron ductile fittings; stainless steel fittings; iron threaded elbows; stainless steel burn cages (for yard debris); stainless steel wire with fittings; steel stranded wire, ropes, cables; woven steel mesh; steel roller chains; steel skid chains; steel welded linked chains; stainless steel burn cage bases; iron or steel wire; copper bus bars; aluminum fasteners/hardware; chain saw blades; earth boring tools; lawnmower blades; replacement mower blades, long reach; pneumatic cylinders; steel brackets (for generators and outdoor power equipment); steel bracket component plates; stainless steel hoses; spark-ignited engine powerheads; telescoping linear engines; power engines; governor linkages; diaphragm pumps; reciprocating positive displacement pumps; rotary positive displacement pumps; centrifugal pumps; single stage pumps with discharge outlet; winches; jacks; electric power graders; snow blower attachments; jack housings; winch housings; pallet jack lifters; powered pallet jack levers; manual pallet jack beds; backhoe shovels; backhoe arms; snow blower chutes; plow shoes; gravel scrapers; self-propelled mowers, gas powered; brush trimmer wheels; brush trimmer housings; mower handles; wood splitter bases; multi-sharpeners; wood chipper heads; wood chipper cast-iron housings; saw guides; wood splitter engine mounts; chain saw housings; gas trimmer shafts; trimmer handles; control or adapter units; transmission shafts-rotor shafts; housed bearings incorporating ball bearings; AC alternators 375–750 kw; AC alternators exceeding 750 kw; ballasts; battery chargers; power plugs; bridge rectifiers; inverters; power supplies; power supply housings; flexible magnets composite; un-magnetized magnets composite; sealed lead acid batteries; nickel-cadmium sealed batteries; lead acid batteries; lithium-ion batteries; battery housings; leaf vacuum bases; distributors; light reflectors; transmitters/receivers; transmitter cases; fixed resistors; fuse holders/circuit protecting; junction boxes; switch circuit boxes; lamps; lamp bulbs; metal halide lamp bulbs; indicator lights; electric synchros/transducers; electrical conductors; mufflers; self-propelled wheelbarrow tires; self-propelled wheelbarrow frames; trailers with tanks; car trailers; generator trailers; trailer wheels; hydrometer bases; fluid level measuring devices; pressure switches; sensors; resistance measuring instruments; light towers without outlets; plastic lamp hoods; light tower risers; and, lamp bases (duty rates range from duty free to 10.7%).

The request indicates that disposable textile bag liners and lithium-ion batteries will be admitted to the zone in privileged foreign status (19 CFR 146.41), thereby precluding inverted tariff benefits on such items. The request indicates that iron ductile fittings are subject to an antidumping/countervailing duty (AD/CVD) order if

imported from certain countries. The FTZ Board's regulations (15 CFR 400.14(e)) require that merchandise subject to AD/CVD orders, or items which would be otherwise subject to suspension of liquidation under AD/CVD procedures if they entered U.S. customs territory, be admitted to the zone in privileged foreign status (19 CFR 146.41). The request also indicates that certain materials/components may be subject to special duties under Section 301 of the Trade Act of 1974, if imported from China. The determination of Section 301 duties requires that such merchandise be admitted to the zone in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 1, 2018.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Diane Finver at *Diane.Finver@trade.gov* or (202) 482–1367.

Dated: August 14, 2018.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2018–17910 Filed 8–17–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–51–2018]

Foreign-Trade Zone (FTZ) 189—Kent/Ottawa/Muskegon Counties, Michigan; Notification of Proposed Production Activity; Helix Steel; (Twisted Steel Micro Rebar); Grand Rapids, Michigan

The KOM Foreign Trade Zone Authority, grantee of FTZ 189, submitted a notification of proposed production activity to the FTZ Board on behalf of Helix Steel, located in Grand Rapids, Michigan. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on August 13, 2018.

The Helix Steel facility is located within Site 11 of FTZ 189. The facility is used for the production of twisted steel micro rebar. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status material/component and specific finished product described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Helix Steel from customs duty payments on the foreign-status component used in export production. On its domestic sales, for the foreign-status material/component noted below, Helix Steel would be able to choose the duty rate during customs entry procedures that applies to twisted steel micro rebar (3.9%). Helix Steel would be able to avoid duty on foreign-status components which become scrap/waste. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The material/component sourced from abroad is: 0.5 mm high-carbon electroplated zinc wire (duty-free). The request indicates that the material/component is subject to special duties under Section 232 of the Trade Expansion Act of 1962, if imported from certain countries. The Section 232 proclamation requires subject merchandise to be admitted to the zone in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 1, 2018.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: August 15, 2018.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2018–17911 Filed 8–17–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Order Denying Export Privileges

In the Matter of: Alex Bryukhov, 7907 Sprucemill Drive, Morrisville, PA 19067.

On April 6, 2016, in the U.S. District Court for the Southern District of New York, Alex Bryukhov (''Bryukhov'') was convicted of violating Section 38 of the Arms Export Control Act (22 U.S.C. 2778 (2012)) (''AECA''), among other crimes. Specifically, Bryukhov was convicted of knowingly and willfully exporting and attempting to export, from the United States to Russia, a FLIR T–60 Thermal Camera, gun parts, and an OASYS Night Vision Sight, which are items designated as defense articles on the United States Munitions List, without the required U.S. Department of State licenses. Bryukhov was sentenced to 15 months in prison, three years of supervised release, and a $100 assessment. Bryukhov is also listed on the U.S. Department of State Debarred List.

Section 766.25 of the Export Administration Regulations (''EAR'' or ''Regulations'')[1] provides, in pertinent part, that ''[t]he Director of the Office of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny the export privileges of any person who has been convicted of a violation of the EAA [Export Administration Act], the EAR, or any order, license, or authorization issued thereunder; any regulation, license or order issued under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706); 18 U.S.C. 793, 794 or 798; section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)); or section 38 of the Arms Export Control Act (22 U.S.C. 2778).'' 15 CFR 766.25(a); *see also* Section 11(h) of the Export Administration Act (''EAA'' or ''the Act''), 50 U.S.C. 4610(h). The denial of export privileges under this provision may be for a period of up to 10 years from the date of the conviction. 15 CFR 766.25(d); *see also* 50 U.S.C. 4610(h). In addition, Section 750.8 of

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2018). The Regulations issued pursuant to the Export Administration Act (50 U.S.C. 4601–4623 (Supp. III 2015) (available at *http://uscode.house.gov*)) (''EAA'' or ''the Act''). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 15, 2017 (82 FR 39005 (Aug. 16, 2017)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.* (2012)).

the Regulations states that the Bureau of Industry and Security's Office of Exporter Services may revoke any Bureau of Industry and Security (''BIS'') licenses previously issued pursuant to the Act or the Regulations in which the person had an interest at the time of his/her conviction.

BIS has received notice of Bryukhov's conviction for violating Section 38 of the AECA, and has provided notice and an opportunity for Bryukhov to make a written submission to BIS, as provided in Section 766.25 of the Regulations. BIS has not received a submission from Bryukhov.

Based upon my review and consultations with BIS's Office of Export Enforcement, including its Director, and the facts available to BIS, I have decided to deny Bryukhov's export privileges under the Regulations for a period of 10 years from the date of Bryukhov's conviction. I have also decided to revoke all licenses issued pursuant to the Act or Regulations in which Bryukhov had an interest at the time of his conviction.

Accordingly, it is hereby ordered:

First, from the date of this Order until April 6, 2026, Alex Bryukhov, with a last known address of 7907 Sprucemill Drive, Morrisville, PA, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to Bryukhov by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with Part 756 of the Regulations, Bryukhov may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Bryukhov and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until April 6, 2026.

Issued this 13th day of August 2018.

Karen H. Nies-Vogel,

Director, Office of Exporter Services.

[FR Doc. 2018–17919 Filed 8–17–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–082]

Steel Wheels From the People's Republic of China: Postponement of Preliminary Determination in the Less-Than-Fair-Value Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable August 20, 2018.

FOR FURTHER INFORMATION CONTACT: Lingjun Wang, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–2316.

SUPPLEMENTARY INFORMATION:

Background

On April 16, 2018, the Department of Commerce (Commerce) initiated a less-than-fair-value (LTFV) investigation of imports of certain steel wheels from the People's Republic of China (China).[1] Currently, the preliminary determination is due no later than September 4, 2018.

Postponement of Preliminary Determinations

Section 733(b)(1)(A) of the Tariff Act of 1930, as amended (the Act), requires Commerce to issue the preliminary determination in an LTFV investigation within 140 days after the date on which Commerce initiated the investigation. However, section 733(c)(1) of the Act permits Commerce to postpone the preliminary determination until no later than 190 days after the date on which Commerce initiated the investigation if: (A) The petitioner makes a timely request for a postponement; or (B) Commerce concludes that the parties concerned are cooperating, that the investigation is extraordinarily complicated, and that additional time is necessary to make a preliminary determination. Under 19 CFR 351.205(e), the petitioner must submit a request for postponement 25 days or

[1] *See Certain Steel Wheels from the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation,* 83 FR 17798 (April 24, 2018) (*Initiation Notice*).

more before the scheduled date of the preliminary determination and must state the reasons for the request. Commerce will grant the request unless it finds compelling reasons to deny the request. *See* 19 CFR 351.205(e).

On August 8, 2018, the petitioners [2] submitted a timely request that Commerce postpone the preliminary determination in this investigation. The petitioners stated that they request postponement because under the current deadline for the preliminary determinations, Commerce will not have received all questionnaire responses and obtained sufficient information for making a preliminary determination.[3]

For the reasons stated above and because there are no compelling reasons to deny the request, Commerce, in accordance with section 733(c)(1)(A) of the Act, is postponing the deadline for the preliminary determination by 50 days (*i.e.,* 190 days after the date on which this investigation was initiated). As a result, Commerce will issue its preliminary determination no later than October 23, 2018. In accordance with section 735(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determination of this investigation will continue to be 75 days after the date of publication of the preliminary determination, unless postponed at a later date.

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dates: August 14, 2018.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2018–17906 Filed 8–17–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–552–813]

Steel Wire Garment Hangers From the Socialist Republic of Vietnam; Continuation of Countervailing Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of determinations by the Department of Commerce (Commerce) and the International Trade Administration (ITC) that revocation of the countervailing duty order on steel wire garment hangers (hangers) from the Socialist Republic of Vietnam (Vietnam) would likely lead to continuation or recurrence of countervailable subsidies and material injury to an industry in the United States, Commerce is publishing a notice of the continuation of the countervailing duty (CVD) order.

DATES: Applicable August 20, 2018.

FOR FURTHER INFORMATION CONTACT: John Conniff, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1009.

SUPPLEMENTARY INFORMATION:

Background

On February 5, 2013, Commerce published in the **Federal Register** the notice of the CVD order on hangers from Vietnam.[1] On November 1, 2017, Commerce published the notice of initiation of the first five-year (sunset) review of the CVD order on hangers from Vietnam, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2] On November 1, 2017, the ITC instituted its review of the order.[3]

As a result of the sunset review, Commerce found that revocation of the CVD order on hangers from Vietnam would likely lead to continuation or recurrence of countervailable subsidies.[4] Commerce, therefore, notified the ITC of the magnitude of the countervailable subsidy rates likely to prevail should the CVD order be revoked.

On May 22, 2018, pursuant to sections 751(c) and 752(a) of the Act, the ITC published its determination that revocation of the CVD order on hangers from Vietnam would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[5]

Scope of the Order

The merchandise subject to the *Order* is steel wire garment hangers, fabricated from carbon steel wire, whether or not galvanized or painted, whether or not coated with latex or epoxy or similar gripping materials, and/or whether or not fashioned with paper covers or capes (with or without printing) and/or nonslip features such as saddles or tubes. These products may also be referred to by a commercial designation, such as shirt, suit, strut, caped, or latex (industrial) hangers.

Specifically excluded from the scope of the *Order* are (a) wooden, plastic, and other garment hangers that are not made of steel wire; (b) steel wire garment hangers with swivel hooks; (c) steel wire garment hangers with clips permanently affixed; and (d) chrome-plated steel wire garment hangers with a diameter of 3.4 mm or greater.

The products subject to the *Order* are currently classified under U.S. Harmonized Tariff Schedule (HTSUS) subheadings 7326.20.0020 and 7323.99.9080. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Continuation of the Order

As a result of the determinations by Commerce and the ITC that revocation of the CVD order would likely lead to continuation or recurrence of countervailable subsidies and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act and 19 CFR 351.218(a), Commerce hereby orders the continuation of the CVD order on hangers from Vietnam.

U.S. Customs and Border Protection will continue to collect CVD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of continuation of this order will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act, Commerce intends to initiate the next five-year review of this order not later than 30 days prior to the fifth anniversary of the effective date of continuation.

[2] The petitioners are Accuride Corporation and Maxion Wheels Aleron LLC (collectively, the petitioners).

[3] *See* the petitioners' August 8, 2018 Letter re: Petitioners' Request to Extend the Preliminary Determination.

[1] *See Certain Steel Wire Garment Hangers from the Socialist Republic of Vietnam: Countervailing Duty Order,* 78 FR 8107 (February 5, 2013) (*Order*).

[2] *See Initiation of Five-Year ("Sunset") Reviews,* 82 FR 50,612 (November 1, 2017) (*Initiation*).

[3] *See Steel Wire Garment Hangers from Taiwan and Vietnam; Institution of Five-Year Reviews,* 82 FR 50686 (November 1, 2017).

[4] *See Steel Wire Garment Hangers from the Socialist Republic of Vietnam: Final Results of Expedited First Sunset Review of the Countervailing Duty Order,* 83 FR 10660 (March 12, 2018) (*Expedited Final Results*) and accompanying decision memorandum.

[5] *See Steel Wire Garment Hangers from Taiwan and Vietnam,* Investigation Nos. 701–TA–487 and 731–TA–1197–1198 (Review), USITC Publication 4784 (May 2018); *see also Steel Wire Garment Hangers from Taiwan and Vietnam,* 83 FR 23723 (May 22, 2018).

This five-year (sunset) review and this notice are in accordance with sections 751(c) of the Act and published pursuant to section 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: August 14, 2018.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2018–17908 Filed 8–17–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–979, C–570–980]

Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Preliminary Results of Changed Circumstances Reviews, and Consideration of Revocation of the Antidumping and Countervailing Duty Orders, in Part

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On April 17, 2018, the Department of Commerce (Commerce) received a request for revocation, in part, of the antidumping duty (AD) and countervailing duty (CVD) orders on certain crystalline silicon photovoltaic cells from the People's Republic of China (China) (the *Orders*) with respect to certain off-grid solar panels. Because producers accounting for substantially all of the domestic production of certain off-grid solar panels lack interest in the relief provided by the *Orders,* we intend to revoke, in part, the *Orders* with respect to these products. Interested parties are invited to comment on these preliminary results.

DATES: Applicable August 20, 2018.

FOR FURTHER INFORMATION CONTACT: Eli Lovely, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1593.

Background

On December 7, 2012, Commerce published AD and CVD orders on certain crystalline silicon photovoltaic cells, whether or not assembled into modules, from China.[1] On April 17, 2018, Goal Zero, LLC (Goal Zero), an importer of the subject merchandise, requested through changed circumstances reviews, revocation, in part, of the *Orders,* pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.216(b),[2] with respect to certain off-grid solar panels. On May 4, 2018, SolarWorld Americas, Inc. (the petitioner) submitted a letter stating that it does not oppose the partial revocation proposed by Goal Zero.[3] On May 14, 2018, Commerce issued a supplemental questionnaire to Goal Zero,[4] to which it responded on May 23, 2018.[5]

On May 30, 2018, Commerce extended the time for determining whether to initiate the requested changed circumstances reviews by an additional 30 days, or until July 2, 2018.[6] On June 29, 2018, Commerce again extended the deadline for determining whether to initiate the requested changed circumstances reviews by an additional 15 days, or until July 16, 2018.[7] On July 9, 2018, Goal Zero and the petitioner submitted comments regarding the proposed scope exclusion language for these changed circumstances reviews.[8]

On July 20, 2018, we published the *Initiation Notice* for these changed circumstances reviews in the **Federal Register**.[9] Because the statement submitted by the petitioner in response to Goal Zero's request did not indicate whether the petitioner accounts for substantially all of the domestic production of crystalline silicon photovoltaic products, in the *Initiation Notice,* we invited interested parties to submit comments concerning industry support for the revocation in part, as well as comments and/or factual information regarding the changed circumstances reviews. On July 30, 2018, the petitioner submitted comments reiterating support for Goal Zero's request.[10] We received no other comments.

Scope of the Antidumping and Countervailing Duty Orders on Certain Crystalline Silicon Photovoltaic Cells From the People's Republic of China

The merchandise covered by the *Orders* is crystalline silicon photovoltaic cells, and modules, laminates, and panels, consisting of crystalline silicon photovoltaic cells, whether or not partially or fully assembled into other products, including, but not limited to, modules, laminates, panels and building integrated materials.

The *Orders* cover crystalline silicon photovoltaic cells of thickness equal to or greater than 20 micrometers, having a p/n junction formed by any means, whether or not the cell has undergone other processing, including, but not limited to, cleaning, etching, coating, and/or addition of materials (including, but not limited to, metallization and conductor patterns) to collect and forward the electricity that is generated by the cell.

Merchandise under consideration may be described at the time of importation as parts for final finished products that are assembled after importation, including, but not limited to, modules, laminates, panels, building-integrated modules, building-integrated panels, or other finished goods kits. Such parts that otherwise meet the definition of merchandise under consideration are included in the scope of the *Orders.*

Excluded from the scope of the *Orders* are thin film photovoltaic products produced from amorphous silicon (a-Si), cadmium telluride (CdTe), or copper indium gallium selenide (CIGS).

Also excluded from the scope of the *Orders* are crystalline silicon photovoltaic cells, not exceeding 10,000mm^2 in surface area, that are permanently integrated into a consumer good whose function is other than power generation and that consumes the electricity generated by the integrated crystalline silicon photovoltaic cell. Where more than one cell is

[1] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order,* 77 FR 73018 (December 7, 2012) (*AD Order*) and *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Countervailing Duty Order,* 77 FR 73017 (December 7, 2012) (*CVD Order*) (collectively, *Orders*).

[2] *See* Goal Zero's Letter, ''Goal Zero LLC's Request for a Changed Circumstances Review,'' (Goal Zero's Request) dated April 17, 2018.

[3] *See* SolarWorld's Letter, ''Support for Goal Zero LLC's Request for a Changed Circumstances Review,'' dated May 4, 2018.

[4] *See* Commerce's Letter, dated May 14, 2018.

[5] *See* ''Goal Zero LLC's Response to Additional Questions Regarding the Changed Circumstances Reviews,'' dated May 23, 2018.

[6] *See* Commerce's Letter, dated May 30, 2018.

[7] *See* Commerce's Letter, dated June 29, 2018.

[8] *See* Goal Zero's Letter, ''Goal Zero LLC's Comments Regarding the Proposed Scope of the Changed Circumstances Reviews,'' dated July 9, 2018; *see also* the petitioner's Letter, ''Comments on Goal Zero LLC' s Request for a Changed Circumstances Review,'' dated July 9, 2018.

[9] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Notice of Initiation of Changed Circumstances Reviews, and Consideration of Revocation of the Antidumping and Countervailing Duty Orders in Part,* 83 FR 34542 (July 20, 2018) (*Initiation Notice*).

[10] *See* SolarWorld's Letter, ''Comments on Goal Zero LLC Changed Circumstances Reviews,'' dated July 30, 2018.

permanently integrated into a consumer good, the surface area for purposes of this exclusion shall be the total combined surface area of all cells that are integrated into the consumer good.

Additionally, excluded from the scope of the *Orders* are panels with surface area from 3,450 mm2 to 33,782 mm2 with one black wire and one red wire (each of type 22 AWG or 24 AWG not more than 206 mm in length when measured from panel extrusion), and not exceeding 2.9 volts, 1.1 amps, and 3.19 watts. For the purposes of this exclusion, no panel shall contain an internal battery or external computer peripheral ports.

Modules, laminates, and panels produced in a third-country from cells produced in the PRC are covered by the *Orders;* however, modules, laminates, and panels produced in the PRC from cells produced in a third-country are not covered by the *Orders.*

Merchandise covered by the *Orders* is currently classified in the Harmonized Tariff System of the United States (HTSUS) under subheadings 8501.61.0000, 8507.20.80, 8541.40.6020, 8541.40.6030, and 8501.31.8000. These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of the *Orders* is dispositive.[11]

Scope of Changed Circumstances Reviews

Goal Zero requests that Commerce revoke the *Orders* in part to exclude from the scope certain off-grid solar panels as described below:

(1) Off grid CSPV panels in rigid form with a glass cover, with the following characteristics:

(A) A total power output of 100 watts or less per panel;

(B) a maximum surface area of 8,000 cm^2 per panel;

(C) do not include a built-in inverter;

(D) must include a permanently connected wire that terminates in either an 8mm male barrel connector, or a two-port rectangular connector with two pins in square housings of different colors;

(E) must include visible parallel grid collector metallic wire lines every 1–4 millimeters across each solar cell; and

(F) must be in individual retail packaging (for purposes of this provision, retail packaging typically includes graphics, the product name, its description and/or features, and foam for transport); and

(2) Off grid CSPV panels without a glass cover, with the following characteristics:

(A) A total power output of 100 watts or less per panel;

(B) a maximum surface area of 8,000 cm^2 per panel;

(C) do not include a built-in inverter;

(D) must include visible parallel grid collector metallic wire lines every 1–4 millimeters across each solar cell; and

(E) each panel is

1. Permanently integrated into a consumer good;

2. encased in a laminated material without stitching, or

3. has all of the following characteristics: (i) The panel is encased in sewn fabric with visible stitching, (ii) includes a mesh zippered storage pocket, and (iii) includes a permanently attached wire that terminates in a female USB–A connector.[12]

Preliminary Results of Changed Circumstances Review, and Intent To Revoke the Orders, in Part

Pursuant to section 751(d)(1) of the Act, section 782(h) of the Act, and 19 CFR 351.222(g), Commerce may revoke an AD or CVD order, in whole or in part, based on a review under section 751(b) of the Act (*i.e.,* a changed circumstance review). Section 751(b)(1) of the Act requires a changed circumstance review to be conducted upon receipt of a request which shows changed circumstances sufficient to warrant a review. Section 782(h)(2) of the Act gives Commerce the authority to revoke an order if producers accounting for substantially all of the production of the domestic like product have expressed a lack of interest in the order. Section 351.222(g) of Commerce's regulations provides that Commerce will conduct a changed circumstances review under 19 CFR 351.216, and may revoke an order (in whole or in part), if it concludes that: (i) Producers accounting for substantially all of the production of the domestic like product to which the order pertains have expressed a lack of interest in the relief provided by the order, in whole or in part, or (ii) if other changed circumstances sufficient to warrant revocation exist. Both the Act and Commerce's regulations require that ''substantially all'' domestic producers express a lack of interest in the order for Commerce to revoke the order, in whole or in part.[13] Commerce has interpreted ''substantially all'' to represent producers accounting for at least 85 percent of U.S. production of the domestic like product.[14]

In its April 17, 2018 submission, Goal Zero requested that Commerce expedite the changed circumstances reviews.[15] Commerce's regulations do not specify a deadline for the issuance of preliminary results of a changed circumstances review, but provide that Commerce will issue the final results of review within 270 days after the date on which the changed circumstances review is initiated, or within 45 days if all parties to the proceeding agree to the outcome of the review.[16] Commerce did not issue a combined notice of initiation and preliminary results because, as discussed above, the statement provided by the petitioner in response to Goal Zero's Request did not indicate whether the petitioner accounts for substantially all domestic production of certain crystalline silicon photovoltaic products.[17] Thus, Commerce did not determine in the *Initiation Notice* that producers accounting for substantially all of the production of the domestic like product lacked interest in the continued application of the *Orders* as to certain off-grid solar panels. Further, Commerce requested interested party comments on the issue of domestic industry support of a partial revocation.[18]

Commerce received no comments concerning whether the petitioner accounts for substantially all domestic production of certain crystalline silicon photovoltaic products or opposing initiation of the changed circumstances reviews of the *Orders.* Hence, Commerce now preliminarily finds that producers accounting for substantially all of the production of the domestic like product lack interest in the relief afforded by the *Orders* with respect to the off-grid solar panels as described in Goal Zero's Request. We will consider comments from interested parties on these preliminary results before issuing the final results of this review.[19]

[11] *See AD Order,* 77 FR at 73018–73019; *CVD Order,* 77 FR at 73017 (footnote omitted).

[12] *See* Goal Zero's Letter, ''Goal Zero LLC's Comments Regarding the Proposed Scope of the Changed Circumstances Reviews,'' dated July 9, 2018 at 10–11.

[13] *See* Section 782(h) of the Act and 19 CFR 351.222(g).

[14] *See Honey from Argentina; Antidumping and Countervailing Duty Changed Circumstances Reviews; Preliminary Intent to Revoke Antidumping and Countervailing Duty Orders,* 77 FR 67790, 67791 (November 14, 2012), unchanged in *Honey from Argentina; Final Results of Antidumping and Countervailing Duty Changed Circumstances Reviews; Revocation of Antidumping and Countervailing Duty Orders,* 77 FR 77029 (December 31, 2012) (*Honey From Argentina*).

[15] *See* Goal Zero's Request at 9.

[16] *See* 19 CFR 351.216(e).

[17] *See Initiation Notice.*

[18] *Id.*

[19] *See, e.g., Honey From Argentina; Antidumping and Countervailing Duty Changed Circumstances Reviews; Preliminary Intent to Revoke Antidumping and Countervailing Duty Orders,* 77 FR 67790, 67791 (November 14, 2012); *Aluminum Extrusions*

Continued

In light of Goal Zero's Request and the absence of any interested party comments received during the comment period, we preliminarily conclude that changed circumstances warrant revocation of the *Orders,* in part, because the producers accounting for substantially all of the production of the domestic like product to which the *Orders* pertain lack interest in the relief provided by the *Orders* with respect to the off-grid solar panels that are the subject of Goal Zero's Request.

Accordingly, we are notifying the public of our intent to revoke the *Orders,* in part, with respect to certain off-grid solar panels as defined above.

Public Comment

Interested parties are invited to comment on these preliminary results in accordance with 19 CFR 351.309(c)(1)(ii). Written comments may be submitted no later than 14 days after the date of publication of these preliminary results. Rebuttals to written comments, limited to issues raised in such comments, may be filed no later than seven days after the due date for comments. All submissions must be filed electronically using Enforcement and Compliance's AD and CVD Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and in the Central Records Unit, room B8024 of the main Department of Commerce building. An electronically filed document must be received successfully in its entirety by ACCESS, by 5 p.m. Eastern Time on the day it is due.

Commerce will issue the final results of these changed circumstances reviews, which will include its analysis of any written comments, no later than 270 days after the date on which this review was initiated.

If, in the final results of these reviews, Commerce continues to determine that changed circumstances warrant the revocation of the *Orders,* in part, we will instruct U.S. Customs and Border Protection to liquidate without regard to antidumping or countervailing duties, and to refund any estimated antidumping or countervailing duties, on all unliquidated entries of the merchandise covered by the revocation that are not covered by the final results of an administrative review or automatic liquidation.

The current requirement for cash deposits of estimated antidumping and countervailing duties on all entries of subject merchandise will continue unless until they are modified pursuant to the final results of these changed circumstances reviews.

These preliminary results of reviews and notice are in accordance with sections 751(b) and 777(i) of the Act and 19 CFR 351.216, 19 CFR 351.221(c)(3), and 19 CFR 351.222.

Dated: August 14, 2018.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2018–17907 Filed 8–17–18; 8:45 am]

BILLING CODE 3510–DS–P

From the People's Republic of China: Preliminary Results of Changed Circumstances Reviews, and Intent to Revoke Antidumping and Countervailing Duty Orders in Part, 78 FR 66895 (November 7, 2013); *see also* 19 CFR 351.222(g)(1)(v).

DEPARTMENT OF DEFENSE

Department of the Army

Army Education Advisory Subcommittee Meeting Notice

AGENCY: Department of the Army, DOD.

ACTION: Notice of open subcommittee meeting.

SUMMARY: The Department of the Army is publishing this notice to announce the following Federal advisory committee meeting of the U.S. Army War College Board of Visitors, a subcommittee of the Army Education Advisory Committee. This meeting is open to the public.

DATES: The U.S. Army War College Board of Visitors Subcommittee will meet from 8:00 a.m. to 2:00 p.m. on October 12, 2018.

ADDRESSES: U.S. Army War College, 122 Forbes Avenue, Carlisle, PA, Command Conference Room, Root Hall, Carlisle Barracks, PA 17013.

FOR FURTHER INFORMATION CONTACT: Dr. David Dworak, the Alternate Designated Federal Officer for the subcommittee, in writing at Office of the Provost, 122 Forbes Ave. Carlisle, PA 17013, by email at *david.d.dworak.civ@mail.mil,* or by telephone at (717) 245–3365.

SUPPLEMENTARY INFORMATION: The subcommittee meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR § 102–3.150.

Purpose of the Meeting: The purpose of the meeting is to provide the subcommittee with an overview of the U.S. Army War College Academic Campaign Plan, discuss Middle States and JPME II accreditation matters, and to address other administrative matters.

Agenda: The subcommittee will review and evaluate information related to the continued academic growth, accreditation, and development of the U.S. Army War College. General deliberations leading to provisional findings will be referred to the Army Education Advisory Committee for deliberation by the Committee under the open-meeting rules.

Public Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and subject to the availability of space, this meeting is open to the public. Seating is on a first to arrive basis. Attendees are requested to submit their, name, affiliation, and daytime phone number seven business days prior to the meeting to Dr. David Dworak, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public attending the subcommittee meetings will not be permitted to present questions from the floor or speak to any issue under consideration by the subcommittee. Because the meeting of the subcommittee will be held in a Federal Government facility on a military base, security screening is required. A photo ID is required to enter base. Please note that security and gate guards have the right to inspect vehicles and persons seeing to enter and exit the installation. Root Hall is fully handicap accessible. Wheelchair access is available in front at the main entrance of the building. For additional information about public access procedures, contact Dr. David Dworak, the subcommittee's Alternate Designated Federal Officer, at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Written Comments or Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the subcommittee, in response to the stated agenda of the open meeting or in regard to the subcommittee's mission in general. Written comments or statements should be submitted to Dr. David Dworak, the subcommittee Alternate Designated Federal Officer, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone number. The Alternate

Designated Federal Official will review all submitted written comments or statements and provide them to members of the subcommittee for their consideration. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the Alternate Designated Federal Official at least seven business days prior to the meeting to be considered by the subcommittee. Written comments or statements received after this date may not be provided to the subcommittee until its next meeting.

The Alternate Designated Federal Officer will review all comments timely submitted with the subcommittee Chairperson, and ensure comments are provided to all members of the subcommittee before the meeting. After reviewing any written comments submitted, the subcommittee Chairperson and the Alternate Designated Federal Official may choose to invite certain submitters to present their comments verbally during the open portion of this meeting or at a future meeting. The Alternate Designated Federal Officer, in consultation with the subcommittee Chairperson, may allot a specific amount of time for submitters to present their comments verbally.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2018–17892 Filed 8–17–18; 8:45 am]

BILLING CODE 5001–03–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC18–137–000.
Applicants: Vermont Transco LLC.
Description: Application for Authorization under Section 203 of the Federal Power Act, et al. of Vermont Transco LLC.
Filed Date: 8/10/18.
Accession Number: 20180810–5105.
Comments Due: 5 p.m. ET 8/31/18.

Docket Numbers: EC18–138–000.
Applicants: Bayonne Energy Center, LLC, NHIP II Bayonne Holdings, LLC, Zone J Tolling Co., LLC.
Description: Joint Application for Authorization under Section 203 of the Federal Power Act, et al. of Bayonne Energy Center, LLC, et. al.
Filed Date: 8/10/18.
Accession Number: 20180810–5169.
Comments Due: 5 p.m. ET 8/31/18.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2718–030; ER10–2719–030.
Applicants: Cogen Technologies Linden Venture, L.P., East Coast Power Linden Holding, L.L.C.
Description: Notice of Non-Material Change in Status of Cogen Technologies Linden Venture, L.P.
Filed Date: 8/10/18.
Accession Number: 20180810–5151.
Comments Due: 5 p.m. ET 8/31/18.

Docket Numbers: ER18–1647–001.
Applicants: PJM Interconnection, L.L.C.
Description: Compliance filing: Compliance Filing per Commission's 7/13/2018 order re: Lessons Learned Part 2 to be effective 7/16/2018.
Filed Date: 8/13/18.
Accession Number: 20180813–5078.
Comments Due: 5 p.m. ET 9/4/18.

Docket Numbers: ER18–2199–000.
Applicants: San Diego Gas & Electric Company.
Description: § 205(d) Rate Filing: Service Agreement 54 to be effective 8/11/2018.
Filed Date: 8/10/18.
Accession Number: 20180810–5147.
Comments Due: 5 p.m. ET 8/31/18.

Docket Numbers: ER18–2200–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2018–08–10_Termination of SA 3116 ATC–WPL Project Commitment Agreement_Hawk to be effective 8/11/2018.
Filed Date: 8/10/18.
Accession Number: 20180810–5165.
Comments Due: 5 p.m. ET 8/31/18.

Docket Numbers: ER18–2201–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2018–08–10_Termination of SA 3117 ATC–WPL Project Commitment Agreement_Schofield to be effective 8/11/2018.
Filed Date: 8/10/18.
Accession Number: 20180810–5167.
Comments Due: 5 p.m. ET 8/31/18.

Docket Numbers: ER18–2202–000.
Applicants: Vermont Transco LLC.
Description: Request for Rate Recovery of Vermont Transco LLC.
Filed Date: 8/10/18.
Accession Number: 20180810–5180.
Comments Due: 5 p.m. ET 8/31/18.

Docket Numbers: ER18–2203–000.
Applicants: Upper Michigan Energy Resources Corporation.
Description: Baseline eTariff Filing: UMERC Filing of Market-Based Rate Tariff to be effective 10/12/2018.
Filed Date: 8/13/18.
Accession Number: 20180813–5050.
Comments Due: 5 p.m. ET 9/4/18.

Docket Numbers: ER18–2204–000.
Applicants: ISO New England Inc.
Description: ISO New England Inc. submits Second Quarter 2018 Capital Budget Report.
Filed Date: 8/10/18.
Accession Number: 20180810–5194.
Comments Due: 5 p.m. ET 8/31/18.

Docket Numbers: ER18–2205–000.
Applicants: Nevada Power Company.
Description: § 205(d) Rate Filing: Rate Schedule No. 136 NPC/APS Mead-Phoenix Project Concurrence to be effective 7/1/2018.
Filed Date: 8/13/18.
Accession Number: 20180813–5118.
Comments Due: 5 p.m. ET 9/4/18.

Docket Numbers: ER18–2206–000.
Applicants: GridLiance West LLC.
Description: § 205(d) Rate Filing: GridLiance West Name Change Filing to be effective 8/13/2018.
Filed Date: 8/13/18.
Accession Number: 20180813–5129.
Comments Due: 5 p.m. ET 9/4/18.

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: August 13, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–17861 Filed 8–17–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

August 13, 2018.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP18–1052–000.
Applicants: Florida Southeast Connection, LLC.
Description: Compliance filing Riviera Latereral Compliance Filing to be effective 9/1/2018.
Filed Date: 8/9/18.
Accession Number: 20180809–5074.
Comments Due: 5 p.m. ET 8/21/18.

Docket Numbers: RP18–1053–000.
Applicants: Lake Charles LNG Company, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates Filing to be effective 1/1/2016.
Filed Date: 8/10/18.
Accession Number: 20180810–5070.
Comments Due: 5 p.m. ET 8/22/18.

Docket Numbers: RP18–1054–000.
Applicants: Egan Hub Storage, LLC.
Description: § 4(d) Rate Filing: Egan Form of Service Agreements cleanup to be effective 10/1/2018.
Filed Date: 8/10/18.
Accession Number: 20180810–5073.
Comments Due: 5 p.m. ET 8/22/18.

Docket Numbers: RP18–1055–000.
Applicants: Tallgrass Interstate Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Neg Rate 2018–08–10 Husker Ag to be effective 8/9/2018.
Filed Date: 8/10/18.
Accession Number: 20180810–5168.
Comments Due: 5 p.m. ET 8/22/18.

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: August 13, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–17862 Filed 8–17–18; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2008–0655; FRL–9982–66–OAR]

Proposed Agency Information Collection Request; Comment Request; GreenChill Advanced Refrigeration Partnership (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), ''GreenChill Advanced Refrigeration Partnership (Renewal)'' (EPA ICR No. 2349.02, OMB Control No. 2060–0702) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through May 31, 2019. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before October 19, 2018.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2008–0655, online using *www.regulations.gov* (our preferred method), by email to *a-and-r-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Tom Land, Stratospheric Protection Division, Office of Atmospheric Programs (Mail Code 6205T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 343–9185; fax number: (202) 343–2362; email address: *land.tom@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *https://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) 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; (ii) 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; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) 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. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: GreenChill is a voluntary partnership program sponsored by the U.S. Environmental Protection Agency (EPA) that encourages supermarket companies to adopt cost effective technologies and practices that reduce refrigerant emissions and improve operational efficiency. The GreenChill Program works with the supermarket industry to lower barriers inhibiting the implementation of technologies and practices that reduce refrigerant emissions. The Program effectively promotes the adoption of emission reduction practices and technologies by engaging GreenChill partners to set an annual refrigerant emission reduction goal and develop a refrigerant management plan reflecting the company's implementation objectives.

Implementation of the partners' refrigeration management plan to reduce refrigerant emissions enhances the protection of the environment and may save partners money and improve operational efficiency. The GreenChill Program offers the opportunity for any individual store to be GreenChill certified at the silver-, gold- or platinum-level when it demonstrates that the amount of refrigerant used is below a specified limit, based on the store's MBTU/hour cooling load, and that the refrigerant emitted from the store in the prior 12 months is below a specified percentage depending on each GreenChill store certification level. Information submitted for the certification of individual stores is compared to these set criteria for each certification level. The certification of a store provides the opportunity for broad recognition within the supermarket industry and with the store's customers.

Form numbers: GreenChill Partnership Agreement; Partner Annual Report (GreenChill Installed Refrigerant and Emissions Corporate Report for Food Retail Partners); Refrigerant Management Plan; Store Certification Application.

Respondents/affected entities: The following is a list of North American Industry Classification System (NAICS) codes for organizations potentially affected by the information requirements covered under this ICR are:

445110 Supermarkets

Respondent's obligation to respond: Voluntary.

Estimated number of respondents: 30 (per year).

Frequency of response: Annual, and when desired.

Total estimated burden: 407 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $19,726 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in estimates: There is a decrease of 1.2 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease is due in part to a decrease in the number of respondents due to industry consolidation, acquisitions, and bankruptcy, as well as a reduction in the number of companies joining the partnership each year.

Dated: August 10, 2018.

Cynthia A. Newberg,

Director, Stratospheric Protection Division.

[FR Doc. 2018–17934 Filed 8–17–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2014–0059; FRL–9982–41–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Natural Gas Transmission and Storage (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NESHAP for Natural Gas Transmission and Storage (EPA ICR No. 1789.10, OMB Control No. 2060–0418), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through August 31, 2018. Public comments were previously requested via the **Federal Register** on June 29, 2017 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before September 19, 2018.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2014–0059, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Natural Gas Transmission and Storage (40 CFR part 63, subpart HHH) apply to existing facilities and new facilities that are major sources of hazardous air pollutants (HAP) and that either transport or store natural gas prior to entering the pipeline to a local distribution company or to a final end user (if there is no local distribution company). The 2012 amendment eliminates the startup, shutdown and malfunction (SSM) exemption, establishes MACT standards for ''small'' glycol dehydration units (glycol dehydrators with an actual annual average natural gas flowrate less than 283,000 scmd or actual average benzene emissions less than 0.9 Mg/yr), and requires facilities using carbon adsorbers as a control device to keep records of their carbon replacement schedule. New facilities include those that commenced construction or reconstruction after the date of proposal. In general, all NESHAP standards require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance with 40 CFR part 63, subpart HHH.

Form Numbers: None.

Respondents/affected entities: Natural gas transport and storage facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart HHH).

Estimated number of respondents: 55 (total).

Frequency of response: Initially, occasionally, and semiannually.

Total estimated burden: 2,910 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $306,000 (per year), which includes $0 for annualized capital/startup and/or operation & maintenance costs.

Changes in the Estimates: There is an increase in burden hours and number of responses in this ICR compared to the previous ICR. This increase is not due to any program changes. The increase is due to an increase in the number of affected sources subject to the rule based on the latest available data, and taking into account growth in this industry.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2018–17876 Filed 8–17–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9981–13–Region 1]

Notice of Availability of Draft NPDES General Permits for Hydroelectric Generating Facilities in Massachusetts and New Hampshire: The HYDRO General Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of draft NPDES General Permits MAG360000 and NHG360000.

SUMMARY: The Director of the Office of Ecosystem Protection, U.S. Environmental Protection Agency (EPA)—Region 1, is providing a Notice of Availability of Draft National Pollutant Discharge Elimination System (NPDES) General Permits for certain discharges from hydroelectric generating facilities to certain waters of the Commonwealth of Massachusetts and the State of New Hampshire. These Draft NPDES General Permits establish Notice of Intent (NOI), Notice of Change (NOC), and Notice of Termination (NOT) requirements, effluent limitations and requirements, standard conditions and best management practices (BMP) plan requirements for hydroelectric generating facilities that meet the eligibility criteria in Massachusetts and New Hampshire. The Draft Permits will be available on EPA Region 1's website at *https://www.epa.gov/npdes-permits/hydroelectric-generating-facilities-general-permit-hydrogp-massachusetts-new-hampshire.* These General Permits will replace the HYDROGP that expired on December 7, 2014.

DATES: Public comments must be received by October 19, 2018.

ADDRESSES: Written comments on the Draft General Permits may be mailed to U.S. EPA Region 1, Office of Ecosystem Protection, Attn: George Papadopoulos, 5 Post Office Square, Suite 100, Mail Code OEP–06–1, Boston, Massachusetts 0219–3912, or sent via email to: *Papadopoulos.george@epa.gov.* No facsimiles (faxes) will be accepted. The Draft HYDROGP is based on an administrative record available for review at EPA-Region 1, Office of Ecosystem Protection, 5 Post Office Square, Suite 100, Boston, Massachusetts 02109–3912. A reasonable fee may be charged for copying requests. The Fact Sheet for the Draft General Permit sets forth principal facts and the significant factual, legal, methodological, and policy questions considered in the development of the Draft General Permit and is available upon request.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the Draft General Permits may be obtained between the hours of 9 a.m. and 5 p.m. Monday through Friday, excluding holidays from George Papadopoulos, U.S. EPA—Region 1, Office of Ecosystem Protection, 5 Post Office Square—Suite 100, Mail Code OEP06–1, Boston, MA 02109–3912; telephone: 617–918–1579; email: *Papadopoulos.george@epa.gov.*

SUPPLEMENTARY INFORMATION:

Public Comment Information: Interested persons may submit written comments on the Draft General Permits to EPA-Region 1 at the address listed above. Within the comment period, interested persons may also request, in writing, that EPA hold a public hearing pursuant to 40 CFR 124.12, concerning the Draft General Permits. Such requests shall state the nature of the issues proposed to be raised at the hearing. A public hearing may be held at least thirty (30) days after public notice whenever the Regional Administrator finds that response to this notice indicates significant public interest. In reaching a final decision on these Draft General Permits, the Regional Administrator will respond to all significant comments and make responses available to the public at EPA's Boston office. All comments and requests for public hearings must be postmarked or delivered by the close of the public comment period.

General Information: EPA is reissuing two General Permits for the following discharges from hydroelectric generating facilities: (1) Equipment-related cooling water (both contact and non-contact), (2) equipment and floor drain water, (3) maintenance-related water from sump dewatering, (4) facility maintenance-related water during flood/high water events, and (5) equipment-related backwash strainer water. The two General Permits are: MAG360000 for Massachusetts facilities and NHG360000 for New Hampshire facilities.

While these are technically distinct permits, for convenience, they have been grouped into a single document and this document refers to the ''Permit'' in the singular. The Draft General Permit, appendices and attachments are available at *https://www.epa.gov/npdes-permits/hydroelectric-generating-facilities-general-permit-hydrogp-massachusetts-new-hampshire.*

The Draft General Permit includes effluent limitations and requirements based on water quality considerations. The effluent limits established in the Draft General Permit ensure that the surface water quality standards of the receiving water(s) are attained and/or maintained. The permit also contains BMP plan requirements to ensure EPA has the information necessary to ensure compliance and to ensure discharges meet water quality standards.

Obtaining Authorization: In order to obtain authorization to discharge, operators of existing discharges, including those facilities with coverage under the HYDROGP that expired on December 7, 2014 or with individual NPDES permits that meet the eligibility criteria of this General Permit and whose operators seek authorization under this General Permit, must file a new NOI found in Appendix 4 to EPA and the respective State for coverage within sixty (60) days of the effective date of this permit reissuance. Operators with new discharges must submit a NOI at least thirty (30) days prior to the commencement of discharges. EPA will authorize the discharge, request additional information, or require the operator to apply for an alternative permit or an individual permit. NOIs may be submitted electronically to EPA at *Hydro.GeneralPermit@epa.gov* or sent via regular or overnight mail to: United States Environmental Protection Agency, EPA/OEP HYDROGP Applications Coordinator, 5 Post Office Square—Suite 100 (OEP06–1), Boston, Massachusetts 02109–3912. If required to do so, an operator must also submit a copy of the NOI to the Massachusetts Department of Environmental Protection or the New Hampshire Department of Environmental Services. An operator will be authorized to discharge under the General Permit upon the date

indicated in written notice from EPA following EPA's web posting of the submitted NOI.

Other Legal Requirements: In accordance with the Endangered Species Act (ESA), EPA has updated the provisions and necessary actions and documentation related to potential impacts to endangered species from sites seeking coverage under the General Permit. Concurrently with the public notice of the Draft HYDROGP, EPA has submitted a letter to National Marine Fisheries Service (NMFS) summarizing the results of EPA's assessment of the potential effects to endangered and threatened species and their critical habitats as a result of EPA's reissuance of the HYDROGP. In this document, EPA has concluded that the proposed reissuance of the HYDROGP is not likely to adversely affect (NLAA) the shortnose sturgeon, Atlantic sturgeon, or designated critical habitat for Atlantic sturgeon. EPA has requested that NMFS review this submittal and inform EPA whether it concurs with this preliminary finding.

In the Fact Sheet accompanying the Draft HYDROGP, EPA seeks concurrence from the U.S. Fish and Wildlife Service (USFWS) regarding our determination of effect on endangered species under its jurisdiction. Based on other General Permit proceedings, EPA has tentatively determined that the Draft HYDROGP will have ''no effect.'' The reason for this determination is because each NOI that is submitted must assess site specific endangered species impacts using USFWS' Information, Planning, and Conservation (IPaC) website, available at *https://ecos.fws.gov/ipac/.* By using this website, the applicant can either make a determination of impacts or if there are questions, seek input from USFWS directly. Since each NOI is individually screened prior to submission, EPA has tentatively determined that the Draft HYDROGP will have ''no effect.''

National Historic Preservation Act (NHPA): In accordance with NHPA, EPA has established provisions and documentation requirements for sites seeking coverage under the General Permit to ensure that discharges or actions taken under this General Permit will not adversely affect historic properties and places.

Authority: This action is being taken under the Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: July 10, 2018.

Alexandra Dapolito Dunn,

Regional Administrator.

[FR Doc. 2018–17932 Filed 8–17–18; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of Intent To Terminate Receiverships

Notice is hereby given that the Federal Deposit Insurance Corporation (FDIC or Receiver), as Receiver for the institutions listed below, intends to terminate its receivership for said institutions.

NOTICE OF INTENT TO TERMINATE RECEIVERSHIPS

Fund	Receivership name	City	State	Date of appointment of receiver
10458	Truman Bank	Saint Louis	MO	09/14/2012
10521	The Woodbury Banking Company	Woodbury	GA	08/19/2016

The liquidation of the assets for each receivership has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receiverships will serve no useful purpose. Consequently, notice is given that the receiverships shall be terminated, to be effective no sooner than thirty days after the date of this notice. If any person wishes to comment concerning the termination of any of the receiverships, such comment must be made in writing, identify the receivership to which the comment pertains, and be sent within thirty days of the date of this notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 34.6, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of the above-mentioned receiverships will be considered which are not sent within this time frame.

Dated at Washington, DC, on August 15, 2018.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2018–17914 Filed 8–17–18; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection Renewal; Comment Request (OMB No. 3064–021; and –0135)

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the renewal of existing information collections, as required by the Paperwork Reduction Act of 1995 (PRA). Currently, the FDIC is soliciting comment on renewal of the information collections described below.

DATES: Comments must be submitted on or before October 19, 2018.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *Agency Website: https://www.FDIC.gov/regulations/laws/federal.*
- *Email: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Manny Cabeza (202–898–3767), Counsel, MB–3007, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the appropriate OMB control number referenced in the Supplementary Information section below. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and

Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Manny Cabeza, Counsel, 202–898–3767, *mcabeza@FDIC.gov,* MB–3007, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Proposal to renew the following currently approved collections of information:

1. *Title:* Certification of Compliance with Mandatory Bars to Employment.

OMB Number: 3064–0121.

Form Number: 2120/16.

Affected Public: Individuals seeking employment from the FDIC.

Burden Estimate:

SUMMARY OF ANNUAL BURDEN

	Type of burden	Estimated number of respondents	Estimated time per response	Frequency of response	Total annual estimated burden hours
Form 2120/16	Reporting	500	10 minutes	On Occasion	83
Total estimated annual burden					83

General Description of Collection: There has been no change in the method or substance of this information collection. The change in estimates annual burden is due to a decrease in estimated number of new hires from an annual average of 600 in 2015 to an annual average of 500 currently. This information collection arises from the reporting requirements contained in 12 CFR part 336, subpart B, of the FDIC Rules and Regulations entitled ''Minimum Standards of Fitness for Employment with the Federal Deposit Insurance Corporation''. This rule implements Section 19 of the Resolution Trust Corporation Completion Act (Completion Act), Public Law 103–204, by (among other things) prescribing a certification, with attachments in some cases, relating to job applicants' fitness and integrity. More specifically, the statute provides that the FDIC shall issue regulations implementing provisions that prohibit any person from becoming employed by the FDIC who has been convicted of any felony; has been removed from, or prohibited from participating in the affairs of, any insured depository institution pursuant to any final enforcement action by any appropriate federal banking agency; has demonstrated a pattern or practice of defalcation regarding obligations to insured depository institutions; or has caused a substantial loss to federal deposit insurance funds. This collection of information implements these mandatory bars to employment through a certification, signed by job applicants prior to an offer of employment using form 2120/16.

2. *Title:* Purchaser Eligibility Certification.

OMB Number: 3064–0135.

Form Number: 7300–06

Affected Public: Individuals and entities wishing to purchase receivership assets from the FDIC.

Burden Estimate: There has been no change in the method or substance of this information collection. The Subject Matter Experts (SMEs) from the FDIC's Division of Resolutions and Receiverships have estimated that this information collection will affect 600 respondents annually for the next three years. This estimate is unchanged from 2015. The SMEs reached this estimate by calculating the average number of Purchaser Eligibility Certifications (PECs) completed in the past three years and rounding up.

PURCHASER ELIGIBILITY CERTIFICATIONS (PECS)

Year	Number of PECs [1]
2015	952
2016	468
2017	369
Total	1,789
Three-year average	596.33

The number of PECs completed each year has been declining since 2009. If this trend were to continue, the number of respondents would be expected to continue to decrease from 369 over the next three years, which would imply that the estimated number of respondents should be lower for this collection compared to the one in 2015. The SMEs have acknowledged that 600 respondents may be a conservative estimate, but also believe that it is reasonable. This rationale stems from the fact that the current rate of bank failures is very low. The SMEs also point out that the PECs are collected from prospective purchasers and not just the winning bidders. As a result, the annual number of PECs could increase if there is an increase in the demand for the assets the FDIC sells, even if the number of assets for sale decreases in line with the current trend of diminishing bank failures.

The estimated hourly burden for this information collection is 30 minutes per PEC form. The SMEs have arrived at this estimate through their personal observations of individuals completing these forms at open-outcry auction events. The table below contains estimates for the total estimated reporting burden for this information collection.

SUMMARY OF ANNUAL BURDEN

	Type of burden	Estimated number of respondents	Estimated frequency of responses	Estimated time per response (hrs)	Total estimated annual burden (hrs)
Purchaser Eligibility Certification	Reporting	600	1	0.50	300.00

[1] SMEs within the FDIC's Division of Resolutions and Receiverships (DRR) compiled this information by contacting the managers that handle each asset sales category (structured transactions, cash loan sales, other real estate sales, and securities sales).

Request for Comment

Comments are invited on: (a) Whether the collections of information are necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burdens of the information collections, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, on August 15, 2018.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2018–17915 Filed 8–17–18; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS18–09]

Appraisal Subcommittee; Notice of Meeting

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

ACTION: Notice of meeting.

SUPPLEMENTARY INFORMATION: In accordance with Section 1104(b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, notice is hereby given that the Appraisal Subcommittee (ASC) will meet in open session for its regular meeting:

Location: Federal Reserve Board—International Square location, 1850 K Street NW, Washington, DC 20006.

Date: August 29, 2018.

Time: 10:00 a.m.

Status: Open.

Reports

Chairman
Executive Director
Delegated State Compliance Reviews
Financial Report
Notation Votes

Action and Discussion Items

Open Session Minutes
- April 23, 2018
- May 9, 2018
- June 8, 2018

Appraisal Foundation FY19 Grant Proposal
- Foundation Grant for AQB and ASB
- State Grant for State Investigator Training

FY19 ASC Budget Proposal
FY19–23 ASC Strategic Plan

How To Attend and Observe an ASC Meeting

If you plan to attend the ASC Meeting in person, we ask that you send an email to *meetings@asc.gov.* You may register until close of business four business days before the meeting date. You will be contacted by the Federal Reserve Law Enforcement Unit on security requirements. You will also be asked to provide a valid government-issued ID before being admitted to the Meeting. The meeting space is intended to accommodate public attendees. However, if the space will not accommodate all requests, the ASC may refuse attendance on that reasonable basis. The use of any video or audio tape recording device, photographing device, or any other electronic or mechanical device designed for similar purposes is prohibited at ASC meetings.

Dated: August 14, 2018.

James R. Park,

Executive Director.

[FR Doc. 2018–17869 Filed 8–17–18; 8:45 am]

BILLING CODE 6700–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the notice must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 4, 2018.

A. Federal Reserve Bank of Minneapolis (Mark A. Rauzi, Vice President), 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *N.A. Corporation, Roseville, Minnesota;* to engage in data processing activities through its subsidiary, ExCheQ, LLC, Roseville, Minnesota, pursuant to section 225.28(b)(14)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, August 14, 2018.

Ann Misback,

Secretary of the Board.

[FR Doc. 2018–17834 Filed 8–17–18; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, without revision, the Recordkeeping Requirements Associated with Regulation GG (Prohibition on Funding of Unlawful internet Gambling) (FR 4026; OMB No. 7100–0317).

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board. Board-approved

collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Board may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Final approval under OMB delegated authority of the extension for three years, without revision of the following report:

Report title: Recordkeeping Requirements Associated with Regulation GG (Prohibition on Funding of Unlawful Internet Gambling).

Agency form number: FR 4026.

OMB control number: 7100–0317.

Frequency: Annual.

Respondents: Depository institutions, credit unions, card system operators, and money transmitting business operators.

Estimated number of respondents: 2,628 depository institutions, 2,839 credit unions, 7 card system operators, 43 money transmitting business operators, and 3 new or de novo institutions.

Estimated average hours per response: Ongoing annual burden of 8 hours per recordkeeper for depository institutions, credit unions, card system operators, and money transmitting business operators. One-time burden of 100 hours for new or de novo institutions.

Estimated annual burden hours: Ongoing burden, 44,436 hours, and one-time burden, 300 hours.

General description of report: On November 18, 2008, the Board and the Department of the Treasury (the agencies) published a joint notice of final rulemaking in the **Federal Register** (73 FR 69382) adopting a rule on a prohibition on the funding of unlawful internet gambling pursuant to the Unlawful internet Gambling Enforcement Act of 2006 (the Act). Identical sets of the final joint rule with identically numbered sections were adopted by the Board and the Department of the Treasury (the Treasury) within their respective titles of the Code of Federal Regulations (12 CFR part 233 for the Board and 31 CFR part 132 for the Treasury). The compliance date for the joint rule was June 1, 2010 (74 FR 62687). The collection of information is set out in sections 5 and 6 of the joint rule.[1] Section 5 of the joint rule, as required by the Act, requires all non-exempt participants in designated payment systems to establish and implement written policies and procedures reasonably designed to identify and block or otherwise prevent or prohibit transactions in connection with unlawful internet gambling. Section 6 of the joint rule provides non-exclusive examples of policies and procedures deemed by the agencies to be reasonably designed to identify and block or otherwise prevent or prohibit transactions restricted by the Act.

Legal authorization and confidentiality: The Board is authorized pursuant to section 802 of the Act (31 U.S.C. 5364(a)) to prescribe regulations requiring designated payment systems and participants therein to establish of policies and procedures to identify and block or otherwise prevent or prohibit restricted transactions. The FR 4026 is mandatory. The policies and procedures are not required to be submitted to the Board, so normally no confidentiality issues would be implicated. To the extent such policies and procedures are obtained by the Board through the examination process, they may be kept confidential under exemption 8 of the Freedom of Information Act (5 U.S.C. 552(b)(8)), which protects information contained in or related to an examination of a financial institution.

Current actions: On April 17, 2018, the agencies published a joint notice in the **Federal Register** (83 FR 16857) requesting public comment for 60 days on the extension, without revision, of the Recordkeeping Requirements Associated with Regulation GG (Prohibition on Funding of Unlawful Internet Gambling). The comment period for this notice expired on June 18, 2018. The agencies did not receive any comments. The information collection will be extended as proposed and the agencies are publishing separate final notices.

Board of Governors of the Federal Reserve System, August 15, 2018.

Ann Misback,

Secretary of the Board.

[FR Doc. 2018–17875 Filed 8–17–18; 8:45 am]

BILLING CODE 6210–01–P

[1] Section 802 of the Act requires the agencies to prescribe joint regulations requiring each designated payment system, and all participants in such systems, to identify and block or otherwise prevent or prohibit restricted transactions through the establishment of policies and procedures reasonably designed to identify and block or otherwise prevent or prohibit the acceptance of restricted transactions.

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0061; Docket No. 2018–0003; Sequence No. 10]

Submission for OMB Review; Transportation Requirements

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning Transportation Requirements.

DATES: Submit comments on or before September 19, 2018.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Room 10236, NEOB, Washington, DC 20503. Additionally submit a copy to GSA by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by inputting the OMB Control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0061, Transportation Requirements''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0061, Transportation Requirements'' on your attached document.

- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405. ATTN: Ms. Mandell/IC 9000–0061, Transportation Requirements.

Instructions: Please submit comments only and cite Information Collection 9000–0061, Transportation Requirements, in all correspondence related to this collection. Comments received generally will be posted without change to *regulations.gov,*

including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *regulations.gov,* approximately two-to-three business days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Mr. Curtis E. Glover, Sr., Procurement Analyst, Office of Governmentwide Acquisition Policy, GSA 202–501–1448 or via email at *curtis.glover@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

FAR Part 47 contains policies and procedures for applying transportation and traffic management considerations in the acquisition of supplies. The FAR part also contains policies and procedures when acquiring transportation or transportation-related services. Generally, contracts involving transportation require information regarding the nature of the supplies, method of shipment, place and time of shipment, applicable charges, marking of shipments, shipping documents and other related items. Contractors are required to provide the information in accordance with the following FAR Part 47 clauses: 52.247–29 through 52.247–44, 52.247–48, 52.247–52, and 52.247–64. The information is used to ensure that: (1) Acquisitions are made on the basis most advantageous to the Government and; (2) supplies arrive in good order and condition, and on time at the required place.

B. Annual Reporting Burden

Respondents: 65,000.
Responses per Respondent: 22.
Annual Responses: 1,430,000.
Hours per Response: .05.
Total Burden Hours: 71,500.

C. Public Comments

A 60-day notice was published in the **Federal Register** at 83 FR 15571 on April 11, 2018. No comments were received. Public comments are particularly invited on: Whether this collection of information is necessary; whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405, telephone 202–501–4755.

Please cite OMB Control No. 9000–0061, Transportation Requirements, in all correspondence.

William Clark,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2018–17929 Filed 8–17–18; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office on Trafficking in Persons; Notice of Meeting

AGENCY: Administration for Children and Families (ACF), Department of Health and Human Services.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the Federal Advisory Committee Act (FACA) and the Preventing Sex Trafficking and Strengthening Families Act, that a meeting of the National Advisory Committee (NAC) on the Sex Trafficking of Children and Youth in the United States (Committee) will be held on September 13–14, 2018. The purpose of the meeting is for the Committee to discuss its duties and information for a draft report on recommended best practices for states to follow in combating the sex trafficking of children and youth based on multidisciplinary research and promising, evidence-based models and programs.

DATES: The meeting will be held on Thursday, September 13, 2018, from 9:00 a.m. to 5:00 p.m. ET and on Friday, September 14, 2018, from 9:00 a.m. to 1:00 p.m. ET.

ADDRESSES: The meeting will be held at 200 Independence Ave. SW, Washington, DC 20201. Space is limited. Identification will be required at the entrance of the facility (*e.g.,* passport, state ID, or federal ID).

To attend the meeting virtually, please register for this event online: *https://www.acf.hhs.gov/otip/resource/nacagenda0918.*

FOR FURTHER INFORMATION CONTACT: Katherine Chon, Director, Office on Trafficking in Persons, Designated Federal Officer (DFO) at *EndTrafficking@acf.hhs.gov* or (202) 205–4554 or 330 C Street SW, Washington, DC 20201. Additional information is available at *https://www.acf.hhs.gov/otip/partnerships/the-national-advisory-committee.*

SUPPLEMENTARY INFORMATION: The formation and operation of the NAC are governed by the provisions of Public Law 92–463, as amended (5 U.S.C. App. 2), which sets forth standards for the formation and use of federal advisory committees.

Purpose of the NAC: The purpose of the NAC is to advise the Secretary and the Attorney General on practical and general policies concerning improvements to the nation's response to the sex trafficking of children and youth in the United States. The NAC is established pursuant to Section 121 of the Preventing Sex Trafficking and Strengthening Families Act of 2014 (P.L. 113–183).

Tentative Agenda: The agenda can be found at *https://www.acf.hhs.gov/otip/resource/nacagenda0918.*

Public Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and subject to the availability of space, this meeting is open to the public. Seating is on a first to arrive basis. Because the meeting of the NAC will be held at 200 Independence Ave. SW, Washington, DC 20201, security screening is required. Attendees are requested to register by submitting their name, affiliation, email address, and daytime phone number 10 business days prior to the meeting by email to: *adonald@nhttac.org.* A photo ID is required to enter the premises. Please note that space and parking is limited. The building is fully accessible to individuals with disabilities.

Written Comments or Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the FACA, the public or interested organizations may submit written comments or statements to the NAC in response to the stated agenda of the meeting or in regard to the committee's mission in general. Written comments or statements should be addressed to Katherine Chon, the NAC DFO, via email, the preferred mode of submission, at *adonald@nhttac.org.* The DFO will review all submitted written comments or statements and provide them to members of the NAC for consideration in advance of the meeting. Written comments or statements submitted in response to the agenda set forth in this notice must be received by the DFO at least 15 business days prior

to the meeting to be considered by the NAC. Written comments or statements received after this date may not be provided to the NAC until its next meeting.

Verbal Comments or Statements: Pursuant to 41 CFR 102–3.140d, the NAC is not obligated to allow a member of the public to speak or otherwise address the NAC during the meeting. Members of the public are invited to provide verbal comments or statements during the NAC meeting only at the time and manner described below. All requests to speak or otherwise address the NAC during the meeting must be submitted to the NAC's DFO at least 15 days prior to the meeting, via email, the preferred mode of submission, at *adonald@nhttac.org.* The request should include a brief statement of the subject matter to be addressed by the comment and should be relevant to the stated agenda of the meeting or in regard to the NAC's mission in general. The DFO will log each request in the order received. A period near the end of the meeting will be available for verbal public comments. The time allotted will depend on the number of public comments or statements received and the NAC's agenda items. To provide time for as many people to speak as possible, speaking time for each individual will be limited to 3 minutes.

Minutes: The minutes of this meeting will be available for public review and copying within 90 days at: *https://www.acf.hhs.gov/otip/partnerships/the-national-advisory-committee.*

Dated: August 14, 2018.

Steven Wagner,

Acting Assistant Secretary for Children and Families.

[FR Doc. 2018–17891 Filed 8–17–18; 8:45 am]

BILLING CODE 4184–40–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–1558]

Food and Drug Administration's Evaluation of Approaches To Demonstrate Effectiveness of Heartworm Preventatives for Dogs; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is extending the comment period for the request for comments that appeared in the **Federal Register** of May 24, 2018. In the request for comments, FDA requested comments on the design of studies intended to generate data to support substantial evidence of effectiveness for investigational new animal drugs intended for the prevention of heartworm disease in dogs. The Agency is taking this action in response to requests for an extension to allow interested persons additional time to submit comments.

DATES: FDA is extending the comment period on the request for comments published May 24, 2018 (83 FR 24122). Submit either electronic or written comments by November 20, 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 November 20, 2018. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of November 20, 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–N–1558 for ''FDA's Evaluation of Approaches to Demonstrate Effectiveness of Heartworm Preventatives for Dogs.'' 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: Steven Fleischer, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–402–0809, *steven.fleischer@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 24, 2018, FDA published a request for comments with a 90-day comment period to request comments on the design of studies intended to generate data to support substantial evidence of effectiveness for investigational new animal drugs intended for the prevention of heartworm disease in dogs. Comments received will inform FDA's current thinking regarding the design of studies intended to generate data to support substantial evidence of effectiveness for investigational new animal drugs intended for the prevention of heartworm disease in dogs.

The Agency has received a request for a 90-day extension of the comment period for the request for comments. The request conveyed concern that the current 90-day comment period does not allow sufficient time to develop a meaningful or thoughtful response to the request for comments.

FDA has considered the request and is extending the comment period for the request for comments for 90 days, until November 20, 2018. The Agency believes that a 90-day extension allows adequate time for interested persons to submit comments without significantly delaying further action on these important issues.

Dated: August 14, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–17858 Filed 8–17–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–3000]

Pediatric Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Pediatric Advisory Committee (PAC). The general function of the committee is to provide advice and recommendations to FDA on regulatory issues. FDA is establishing a docket for public comments on this document.

DATES: The meeting will be held on September 20, 2018, from 8:30 a.m. to 4 p.m. This is a reschedule of a postponed meeting announced in the **Federal Register** of January 2, 2018 (83 FR 125), originally scheduled for March 23, 2018.

ADDRESSES: FDA White Oak Campus, 10903 New Hampshire Ave., Building 31, Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–002. Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FDA is establishing a docket for public comment on this meeting. The docket number is FDA–2018–N–3000. The docket will close on September 19, 2018. Submit either electronic or written comments on this public meeting by that date. Please note that late, untimely comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of September 19, 2018. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Comments received on or before September 6, 2018, will be provided to the committee. Comments received after that date will be taken into consideration by FDA. You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

Instructions: All submissions received must include Docket No. FDA–2018–N–3000 for ''Pediatric Advisory Committee; Establishment of a Public Docket; Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- *Confidential Submissions*—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' FDA will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and

contact information be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify the information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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

FOR FURTHER INFORMATION CONTACT: Marieann Brill, Office of the Commissioner, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5154, Silver Spring, MD 20993, 240–402–3838, email: *marieann.brill@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's website at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: On Thursday, September 20, 2018, the PAC will meet to discuss pediatric-focused safety reviews, as mandated by the Best Pharmaceuticals for Children Act (Pub. L. 107–109) and the Pediatric Research Equity Act of 2003 (Pub. L. 108–155). Comments about the upcoming advisory committee meeting should be submitted to Docket No. FDA–2018–N–3000.

The PAC will meet to discuss the following Center for Drug Evaluation and Research products: INTUNIV and LEXAPRO.

The FDA will provide general safety updates including updates on the following topics without vote by the committee:

- Overview of the FDA Adverse Event Reporting System and lack of efficacy;
- Generic drug approval process; and discussion on trade versus generic drugs; exceptions;
- Summary of FDA completed review of pediatric safety issues and updated labeling changes for EXJADE (deferasirox);
- Update labeling change for inhaled corticosteroid long-acting β-2 agonists;
- Safety labeling for gadolinium.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's website after the meeting. Background material is available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before September 13, 2018. Oral presentations from the public will be scheduled between approximately 9 a.m. and 10 a.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before September 5, 2018. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by September 6, 2018.

Persons attending FDA's advisory committee meetings are advised that FDA is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Marieann Brill (See **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 14, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–17857 Filed 8–17–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–2946]

Neurological Devices Panel Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) announces a forthcoming public Advisory Committee meeting of the Neurological Devices Panel (Committee). The general function of the Committee is to provide advice and recommendations to the Agency on FDA's regulatory issues. The meeting will be open to the public.

DATES: The meeting will be held on September 27, 2018, from 8 a.m. to 5 p.m.

ADDRESSES: Hilton Washington, DC/North, Salons A, B, C, and D, 620 Perry Pkwy., Gaithersburg, MD 20877. The hotel's phone number is 301–977–8900 and website is: *http://www3.hilton.com/en/hotels/maryland/hilton-washington-dc-north-gaithersburg-GAIGHHF/index.html.* Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FOR FURTHER INFORMATION CONTACT: Aden Asefa, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire

Ave., Bldg. 66, Rm. G642, Silver Spring, MD 20993–0002, *Aden.Asefa@fda.hhs.gov,* 301–796–0400, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced Advisory Committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's website at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: On September 27, 2018, the Committee will discuss, make recommendations, and vote on the premarket approval application sponsored by Sequent Medical, Inc. for the Woven Endobridge (WEB) Aneurysm Embolization System, which is intended to treat wide-neck intracranial aneurysms arising or located at a vessel bifurcation. The WEB device is being evaluated in the WEB Intrasaccular Therapy Study (WEB–IT): a multicenter, prospective, non-randomized investigation. The Committee will be asked to review the clinical data from the WEB–IT study to help the Agency assess the safety and effectiveness of the device for the proposed indications for use.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's website after the meeting. Background material is available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate Advisory Committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before September 20, 2018. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before September 12, 2018. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by September 13, 2018.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Artair Mallett at *Artair.Mallett@fda.hhs.gov* or 301–796–9638 at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 14, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–17867 Filed 8–17–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0248]

Agency Information Collection Activities; Proposed Collection; Comment Request; Guidance for Industry on Formal Dispute Resolution; Appeals Above the Division Level

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 the process for formally resolving scientific and procedural disputes in the Center for Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research (CBER) that cannot be resolved at the division level.

DATES: Submit either electronic or written comments on the collection of information by October 19, 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 October 19, 2018. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of October 19, 2018. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

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

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2012–N–0248 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Guidance for Industry on Formal Dispute Resolution; Appeals Above the Division Level.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

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

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

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrachi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–7726, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

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

Guidance for Industry on Formal Dispute Resolution; Appeals Above the Division Level

OMB Control Number 0910–0430—Extension

This information collection approval request is for FDA guidance on the process for formally resolving scientific and procedural disputes in FDA's CDER and CBER that cannot be resolved at the division level. The guidance document describes procedures for formally appealing such disputes to the office or center level and for submitting information to assist center officials in resolving the issue or issues presented. The guidance document provides information on how the Agency will interpret and apply provisions of the existing regulations regarding internal Agency review of decisions (§ 10.75 (21 CFR 10.75)) and dispute resolution during the investigational new drug (IND) process (§ 312.48 (21 CFR 312.48)) and the new drug application/abbreviated new drug application (NDA/ANDA) process (§ 314.103 (21 CFR 314.103)). In addition, the guidance document provides information on how the Agency will interpret and apply the specific Prescription Drug User Fee Act (PDUFA) goals for major dispute resolution associated with the development and review of PDUFA products.

Existing regulations, which appear primarily in parts 10, 312, and 314 (21 CFR parts 10, 312, and 314), establish procedures for the resolution of scientific and procedural disputes between interested persons and the Agency, CDER, and CBER. All Agency decisions on such matters are based on information in the administrative file (§ 10.75(d)). In general, the information in an administrative file is collected under existing regulations in part 312 (OMB control number 0910–0014), part 314 (OMB control number 0910–0001), and part 601 (21 CFR part 601) (OMB control number 0910–0338), which specify the information manufacturers must submit so that FDA may properly evaluate the safety and effectiveness of drugs and biological products. This information is usually submitted as part of an IND, NDA, or biologics license application (BLA), or as a supplement to an approved application. Although FDA already possesses in the administrative file the information that would form the basis of a decision on a matter in dispute resolution, the submission of information regarding the request itself and the data and information that the requestor relies on in the appeal would facilitate timely resolution of the dispute. The guidance document

describes the following collections of information not expressly specified under existing regulations: The submission of the request for dispute resolution as an amendment to the application for the underlying product, including the submission of supporting information with the request for dispute resolution.

Agency regulations ((§§ 312.23(a)(11) and (d) (21 CFR 312.23(a)(11) and (d), 314.50 (21 CFR 314.50), 314.94 (21 CFR 314.94), and 601.2 (21 CFR 601.2)) state that information provided to the Agency as part of an IND, NDA, ANDA, or BLA must be submitted in triplicate and with an appropriate cover form. Form FDA 1571 must accompany submissions under INDs and Form FDA 356h must accompany submissions under NDAs, ANDAs, and BLAs. Both forms have valid OMB control numbers as follows: Form FDA 1571 (OMB control number 0910–0014) and Form FDA 356h (OMB control number 0910–0338).

In the guidance document, CDER and CBER ask that a request for formal dispute resolution be submitted as an amendment to the application for the underlying product and that it be submitted to the Agency in triplicate with the appropriate form attached, either Form FDA 1571 or Form FDA 356h. The Agency recommends that a request be submitted as an amendment in this manner for two reasons: (1) To ensure that each request is kept in the administrative file with the entire underlying application; and (2) to ensure that pertinent information about the request is entered into the appropriate tracking databases. Use of the information in the Agency's tracking databases enables the appropriate Agency official to monitor progress on the resolution of the dispute and to ensure that appropriate steps will be taken in a timely manner.

CDER and CBER have determined and the guidance document recommends that the following information should be submitted to the appropriate center with each request for dispute resolution so that the center may quickly and efficiently respond to the request: (1) A brief but comprehensive statement of each issue to be resolved, including a description of the issue, the nature of the issue (*i.e.,* scientific, procedural, or both), possible solutions based on information in the administrative file, whether informal dispute resolution was sought prior to the formal appeal, whether advisory committee review is sought, and the expected outcome; (2) a statement identifying the review division/office that issued the original decision on the matter and, if applicable, the last Agency official that attempted to formally resolve the matter; (3) a list of documents in the administrative file or additional copies of such documents that are deemed necessary for resolution of the issue or issues; and (4) a statement that the previous supervisory level has already had the opportunity to review all of the material relied on for dispute resolution. The information the Agency suggests submitting with a formal request for dispute resolution consists of: (1) Statements describing the issue from the perspective of the person with a dispute; (2) brief statements describing the history of the matter; and (3) the documents previously submitted to FDA under an OMB approved collection of information.

Based on FDA's experience with dispute resolution, the Agency expects that most persons seeking formal dispute resolution will have gathered the materials listed previously when identifying the existence of a dispute with the Agency. Consequently, FDA anticipates that the collection of information attributed solely to the guidance document will be minimal.

Provided in this document is an estimate of the annual reporting burden for requests for dispute resolution. Based on data collected from review divisions and offices within CDER and CBER, FDA estimates that approximately 12 sponsors and applicants (respondents) will submit requests for formal dispute resolution to CDER annually and approximately one respondent will submit requests for formal dispute resolution to CBER annually.

The total annual responses are the total number of requests submitted to CDER and CBER in 1 year, including requests for dispute resolution that a single respondent submits more than one time. FDA estimates that CDER receives approximately 17 requests annually and CBER receives approximately 1 request annually. The hours per response is the estimated number of hours that a respondent would spend preparing the information to be submitted with a request for formal dispute resolution in accordance with the guidance document, including the time it takes to gather and copy brief statements describing the issue from the perspective of the person with the dispute, brief statements describing the history of the matter, and supporting information that has already been submitted to the Agency. Based on experience, FDA estimates that approximately 8 hours, on average, would be needed per response. Therefore, FDA estimates that 8 hours will be spent per year by respondents requesting formal dispute resolution in accordance with the guidance document.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Requests for formal dispute resolution	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
CDER	12	1.42	17	8	136
CBER	1	1	1	8	8
Total					144

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

The burden for this information collection has changed since the last OMB approval. Our burden estimate reflects a decrease in burden by 14 records and 112 hours. We attribute this adjustment to a decrease in the number of requests received over the last few years.

Dated: August 14, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–17860 Filed 8–17–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–3038]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Request for Samples and Protocols

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by September 19, 2018.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, Fax: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0206. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Ila Mizrachi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–7726, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Request for Samples and Protocols

OMB Control Number 0910–0206—Extension

This information collection supports Agency regulations. Under section 351 of the Public Health Service Act (42 U.S.C. 262), FDA has the responsibility to issue regulations that prescribe standards designed to ensure the safety, purity, and potency of biological products and to ensure that the biologics licenses for such products are only issued when a product meets the prescribed standards. Under § 610.2 (21 CFR 610.2), the Center for Biologics Evaluation and Research (CBER) or the Center for Drug Evaluation and Research may at any time require manufacturers of licensed biological products to submit to FDA samples of any lot along with the protocols showing the results of applicable tests prior to distributing the lot of the product. In addition to § 610.2, there are other regulations that require the submission of samples and protocols for specific licensed biological products: 21 CFR 660.6 (Antibody to Hepatitis B Surface Antigen); 21 CFR 660.36 (Reagent Red Blood Cells); and 21 CFR 660.46 (Hepatitis B Surface Antigen).

Section 660.6(a) provides requirements for the frequency of submission of samples from each lot of Antibody to Hepatitis B Surface Antigen product, and § 660.6(b) provides the requirements for the submission of a protocol containing specific information along with each required sample. For § 660.6 products subject to official release by CBER, one sample from each filling of each lot is required to be submitted along with a protocol consisting of a summary of the history of manufacture of the product, including all results of each test for which test results are requested by CBER. After official release is no longer required, one sample along with a protocol is required to be submitted at 90-day intervals. In addition, samples, which must be accompanied by a protocol, may at any time be required to be submitted to CBER if continued evaluation is deemed necessary.

Section 660.36(a) requires, after each routine establishment inspection by FDA, the submission of samples from a lot of final Reagent Red Blood Cell product along with a protocol containing specific information. Section 660.36(a)(2) requires that a protocol contain information including, but not limited to, manufacturing records, certain test records, and identity test results. Section 660.36(b) requires a copy of the antigenic constitution matrix specifying the antigens present or absent to be submitted to the CBER Director at the time of initial distribution of each lot.

Section 660.46(a) contains requirements as to the frequency of submission of samples from each lot of Hepatitis B Surface Antigen product, and § 660.46(b) contains the requirements as to the submission of a protocol containing specific information along with each required sample. For § 660.46 products subject to official release by CBER, one sample from each filling of each lot is required to be submitted along with a protocol consisting of a summary of the history or manufacture of the product, including all results of each test for which test results are requested by CBER. After notification of official release is received, one sample along with a protocol is required to be submitted at 90-day intervals. In addition, samples, which must be accompanied by a protocol, may at any time be required to be submitted to CBER if continued evaluation is deemed necessary.

Samples and protocols are required by FDA to help ensure the safety, purity, or potency of the product because of the potential lot-to-lot variability of a product produced from living organisms. In cases of certain biological products (*e.g.,* Albumin, Plasma Protein Fraction, and therapeutic biological products) that are known to have lot-to-lot consistency, official lot release is not normally required. However, submissions of samples and protocols of these products may still be required for surveillance, licensing, and export purposes, or in the event that FDA obtains information that the manufacturing process may not result in consistent quality of the product.

The following burden estimate is for the protocols required to be submitted with each sample. The collection of samples is not a collection of information under 5 CFR 1320.3(h)(2). Respondents to the collection of information under § 610.2 are manufacturers of licensed biological products. Respondents to the collection of information under §§ 660.6(b), 660.36(a)(2) and (b), and 660.46(b) are manufacturers of the specific products referenced previously in this document. The estimated number of respondents for each regulation is based on the annual number of manufacturers that submitted samples and protocols for biological products including submissions for lot release, surveillance, licensing, or export. Based on information obtained from FDA's database system, approximately 79 manufacturers submitted samples and

protocols in fiscal year (FY) 2017, under the regulations cited previously in this document. FDA estimates that approximately 75 manufacturers submitted protocols under § 610.2 and 2 manufacturers submitted protocols under the regulation (§ 660.6) for the other specific product. FDA received no submissions under §§ 660.36 or 660.46; however, FDA is using the estimate of one protocol submission under each regulation in the event that protocols are submitted in the future.

The estimated total annual responses are based on FDA's final actions completed in FY 2017 for the various submission requirements of samples and protocols for the licensed biological products. The average burden per response is based on information provided by industry. The burden estimates provided by industry ranged from 1 to 5.5 hours. Under § 610.2, the hours per response are based on the average of these estimates and rounded to 3 hours. Under the remaining regulations, the average burden per response is based on the higher end of the estimate (rounded to 5 or 6 hours) since more information is generally required to be submitted in the other protocols than under § 610.2.

In the **Federal Register** of May 11, 2018, (83 FR 22081), we published a notice soliciting public comment of the information collection. No comments were received.

We therefore estimate the burden of the information collection as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section/activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
610.2—Requests for Samples and Protocols; Official Release	75	86.267	6,470	3	19,410
660.6(b)—Protocols	2	3.5	7	5	35
660.36(a)(2) and (b)—Samples and Protocols	1	1	1	6	6
660.46(b)—Protocols	1	1	1	5	5
Total					19,456

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

Our estimated burden for the information collection reflects an overall increase of 764 hours and a corresponding increase of 262 responses. We attribute this adjustment to an increase in the number of submissions we received over the last few years.

Dated: August 14, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–17859 Filed 8–17–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0438]

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 September 19, 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.

Title of the Collection: Office of Adolescent Health Teen Pregnancy Prevention, FY 2015–2020 Performance Measure Collection.

Type of Collection: Extension.

OMB No. 0990–0438.

Abstract: The Office of Adolescent Health (OAH), U.S. Department of Health and Human Services (HHS), is requesting renewal by OMB of the existing information collection request for performance measures collection from the TPP grant recipients. Performance measure data collection is a requirement of TPP grants; the extension will allow for the completion of data collection from cohort 2. The collection will provide OAH with performance data to inform planning decisions; identify technical assistance needs for grantees; facilitate grantees' continuous quality improvement in program implementation; and provide HHS, Congress, OMB, and the general public with information about the individuals who participate in TPP-funded activities.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Grant Recipient—Dissemination Form	84	2	15/60	42
Grant Recipient—Partnerships Form	84	2	15/60	42

ESTIMATED ANNUALIZED BURDEN TABLE—Continued

Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Grant Recipient—Facilitator Training Form	84	2	15/60	42
Grant Recipient—Healthcare Linkages Form	84	2	15/60	42
Grant Recipient: Participant Reach Form	84	2	168/60	470
Grant Recipient: Dosage Form	84	2	102/60	286
Grant Recipient Fidelity Form	84	2	102/60	286
Grant Recipient: Cost Form	84	1	30/60	42
Total				1252

Terry Clark,

Office of the Secretary, Asst Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2018–17812 Filed 8–17–18; 8:45 am]

BILLING CODE 4168–11–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Advisory Committee on Children and Disasters Public Teleconference

AGENCY: Office of the Assistant Secretary for Preparedness and Response (ASPR), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services is hereby giving notice that the National Advisory Committee on Children and Disasters (NACCD) will hold a public teleconference on September 11, 2018.

DATES: The NACCD Public Teleconference is September 11, 2018, from 2:00 p.m. to 3:00 p.m. Eastern Daylight Time (EDT).

ADDRESSES: We encourage members of the public to attend the public meetings. To register, send an email to *naccd@hhs.gov* with ''NACCD Registration'' in the subject line. Submit your comments to *naccd@hhs.gov* or via the NACCD Contact Form located at *https://www.phe.gov/Preparedness/legal/boards/naccd/Pages/contact.aspx.* For additional information, visit the NACCD website located at *https://www.phe.gov/naccd.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), and Section 2811A of the Public Health Service (PHS) Act (42 U.S.C. 300hh–10a), as added by Section 103 of the Pandemic and All-Hazards Preparedness Reauthorization Act of 2013 (Pub. L. 113–5), the HHS Secretary, in consultation with the Secretary of the U.S. Department of Homeland Security, established the NACCD. The purpose of the NACCD is to provide advice and consultation to the HHS Secretary with respect to the medical and public health needs of children in relation to disasters.

Background: The September 11, 2018, public teleconference of the NACCD is dedicated to the presentation, deliberation, and vote on the Pediatric Disaster Training Work Group (PDTWG) and Identifying Metrics of Baseline Vulnerability (IMBV) reports. Established under the NACCD in 2017, the PDTWG met several times over the past year to evaluate progress since the 2011 National Center for Disaster Medicine and Public Health consensus report and to develop recommendations to further improve pediatric training to ensure the safety and health of children in disasters. Separately, in 2018, the ASPR identified metrics of baseline community vulnerability as a topic he would like the NACCD to address and provide recommendations. On June 28, 2018, the NACCD met publically and in-person to develop metrics via a facilitated discussion. Takeaways from this discussion served as the basis for the IMBV report. We will post modifications to the agenda on the NACCD meeting website, which is located at *https://www.phe.gov/naccd.*

Availability of Materials: We will post all teleconference materials prior to the teleconference on September 11, 2018, at the website located at *https://www.phe.gov/naccd.*

Procedures for Providing Public Input: Members of the public may attend the public teleconference via a toll-free call-in phone number, which is available on the NACCD website at *https://www.phe.gov/naccd.*

We encourage members of the public to provide written comments that are relevant to the NACCD public teleconference prior to September 11, 2018. Send written comments by email to *naccd@hhs.gov* with ''NACCD Public Comment'' in the subject line. The NACCD Chair will respond to comments received by September 10, 2018, during the public teleconference.

Dated: August 13, 2018.

Robert P. Kadlec,

Assistant Secretary for Preparedness and Response.

[FR Doc. 2018–17901 Filed 8–17–18; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Advisory Committee on Children and Disasters and National Biodefense Science Board Public Teleconference

AGENCY: Office of the Assistant Secretary for Preparedness and Response (ASPR), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services is hereby giving notice that the National Advisory Committee on Children and Disasters (NACCD) and National Biodefense Science Board (NBSB), also known as the National Preparedness and Response Science Board (NPRSB), will hold a joint public teleconference on September 12, 2018.

DATES: The NBSB and NACCD Joint Public Teleconference is September 12, 2018, from 2:00 p.m. to 3:00 p.m. Eastern Daylight Time (EDT).

ADDRESSES: We encourage members of the public to attend the public meetings. To register, send an email to *naccd@hhs.gov* with ''NACCD Registration'' in the subject line, or to *nprsb@hhs.gov* with ''NBSB Registration'' in the subject line. Submit your comments to *naccd@hhs.gov, nprsb@hhs.gov,* the NBSB Contact Form located at *https://www.phe.gov/Preparedness/legal/boards/nprsb/Pages/RFNBSBComments.aspx,* or the NACCD Contact Form

located at *https://www.phe.gov/Preparedness/legal/boards/naccd/Pages/contact.aspx.* For additional information, visit the NACCD website located at *https://www.phe.gov/naccd* or the NBSB website located at *https://www.phe.gov/nprsb.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), and Section 2811A of the Public Health Service (PHS) Act (42 U.S.C. 300hh–10a), as added by Section 103 of the Pandemic and All-Hazards Preparedness Reauthorization Act of 2013 (Pub. L. 113–5), the HHS Secretary, in consultation with the Secretary of the U.S. Department of Homeland Security, established the NACCD. The purpose of the NACCD is to provide advice and consultation to the HHS Secretary with respect to the medical and public health needs of children in relation to disasters.

The NBSB, also known as the National Preparedness and Response Science Board (NPRSB), is authorized under Section 319M of the Public PHS Act (42 U.S.C. 247d–7f), as added by Section 402 of the Pandemic and All-Hazards Preparedness Act of 2006 and amended by Section 404 of the Pandemic and All-Hazards Preparedness Reauthorization Act. The Board is governed by the Federal Advisory Committee Act (5 U.S.C. App.), which sets forth standards for the formation and use of advisory committees. The NBSB provides expert advice and guidance on scientific, technical, and other matters of special interest to the Department regarding current and future chemical, biological, nuclear, and radiological agents, whether naturally occurring, accidental, or deliberate.

Background: The September 12, 2018, public teleconference of the NBSB and the NACCD is dedicated to the presentation, deliberation, and vote on the ASPR Future Strategies Work Group (FSWG) report. We will post modifications to the agenda on the NACCD and NBSB meeting websites, which are located at *https://www.phe.gov/naccd* and *https://www.phe.gov/nprsb.*

Availability of Materials: We will post all teleconference materials prior to the teleconference on September 12, 2018, at the websites located at *https://www.phe.gov/naccd* and *https://www.phe.gov/nprsb.*

Procedures for Providing Public Input: Members of the public may attend the public teleconference via a toll-free call-in phone number, which is available on the NACCD and the NBSB websites at *https://www.phe.gov/naccd* or *https://www.phe.gov/nprsb.*

We encourage members of the public to provide written comments that are relevant to the NACCD and NBSB public teleconference prior to September 12, 2018. Send written comments by email to *naccd@hhs.gov* with ''NACCD Public Comment'' in the subject line or to *nprsb@hhs.gov* with ''NBSB Public Comment'' in the subject line. The NACCD and NBSB Chairs will respond to comments received by September 11, 2018, during the public teleconference.

Dated: August 13, 2018.

Robert P. Kadlec,

Assistant Secretary for Preparedness and Response.

[FR Doc. 2018–17896 Filed 8–17–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Council for Biomedical Imaging and Bioengineering.

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/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Biomedical Imaging and Bioengineering NACBIB Council Meeting, September 2018.

Date: September 13, 2018.

Open: 8:30 a.m. to 12:05 p.m.

Agenda: Report from the Institute Director, other Institute Staff and Scientific Presentation.

Place: The William F. Bolger Center, Franklin Building, Classroom 1, 9600 Newbridge Drive, Potomac, MD 20854.

Closed: 1:15 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: The William F. Bolger Center, Franklin Building, Classroom 1, 9600 Newbridge Drive, Potomac, MD 20854.

Contact Person: David T. George, Ph.D., Acting Associate Director, Office of Research Administration, National Institute of Biomedical Imaging, and Bioengineering, 6707 Democracy Boulevard, Room 920, Bethesda, MD 20892.

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.

Information is also available on the Institute's/Center's home page: *http://www.nibib1.nih.gov/about/NACBIB/NACBIB.htm,* where an agenda and any additional information for the meeting will be posted when available.

Dated: August 14, 2018.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–17925 Filed 8–17–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development: Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Population Sciences Subcommittee.

Date: September 21, 2018.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Minki Chatterji, Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, DHHS, 6710B Rockledge Drive, Rm. 2121D, Bethesda, MD 20892–7501, 301–827–5435, *minki.chatterji@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: August 15, 2018.

Ronald J. Livingston, Jr.,

Program Analyst Office of Federal Advisory Committee Policy.

[FR Doc. 2018–17927 Filed 8–17–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Advancing Translational Sciences Special Emphasis Panel; Pharmacology Studies and Model Development.
Date: September 12, 2018.
Time: 9:30 a.m. to 12:00 p.m.
Agenda: To review and evaluate contract proposals.
Place: National Institutes of Health, One Democracy Plaza, Room 1087, 6701 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: M. Lourdes Ponce, Ph.D., Scientific Review Officer, Office of Scientific Review, National Center for Advancing Translational, Sciences (NCATS), National Institutes of Health, 6701 Democracy Blvd., Democracy 1, Room 1073, Bethesda, MD 20892, 301–435–0810, *lourdes.ponce@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.350, B—Cooperative Agreements; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: August 14, 2018.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–17926 Filed 8–17–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–18–208: Bioengineering Research Partnerships.
Date: September 19, 2018.
Time: 10:00 a.m. to 2:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Songtao Liu, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, Bethesda, MD 20817, 301–827–6828, *songtao.liu@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; AREA Review: Bioengineering Sciences and Technologies (R15).
Date: September 20, 2018.
Time: 9:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: David Filpula, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6181, MSC 7892, Bethesda, MD 20892, 301–435–2902, *filpuladr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 15, 2018.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–17924 Filed 8–17–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Time-Sensitive Obesity.
Date: September 5, 2018.
Time: 9:30 a.m. to 11:30 a.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Michele L. Barnard, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7353, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, (301) 594–8898, *barnardm@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK DDK–D Member Conflict SEP.
Date: October 5, 2018.
Time: 9:00 a.m. to 2:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy

Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Xiaodu Guo, M.D., Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7023, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4719, *guox@extra.niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: August 14, 2018.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–17928 Filed 8–17–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7001–N–43]

30-Day Notice of Proposed Information Collection: Housing Choice Voucher (HCV), Rent subsidies, Low-Income Housing, Homeownership, Portability, HCV Transfers; Project-Based Vouchers; Tribal HUD–VASH

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for 30 days of public comment.

DATES: *Comments Due Date:* September 19, 2018.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806, Email: *OIRASubmission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email *Colette.Pollard@hud.gov,* or telephone 202–402–3400. This is not a toll-free number. Person with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on May 25, 2018 at 83 FR 24333.

A. Overview of Information Collection

Title of Information Collection: Housing Choice Voucher (HCV), Rent subsidies, Low-Income Housing, Homeownership, Portability, HCV Transfers; Project-Based Vouchers; Tribal HUD–VASH.

OMB Approved Number: 2577–0169.

Type of Request: Revision of currently approved collection with changes that include new requirements of the Housing Opportunities Through Modernization Act (HOTMA) of 2016, inclusion of contract amendments for both the HCV and project-based voucher (PBV) programs, and the Tribal HUD–VA Supportive Housing Program (Tribal HUD–VASH).

Form Number: HUD–52515, HUD–52667, HUD–52580, HUD–52580–A, HUD–52517, HUD–52646, HUD–52665, HUD–52641, HUD–52641–A, HUD 52642, HUD 52649, HUD 52531A and B, HUD 52530A, HUD 52530B, HUD 52530C, HUD 52578B, HUD–50164, and Tribal HUD–VASH application materials.

Description of the need for the information and proposed use: Public Housing Agencies (PHA) will prepare an application for funding which specifies the number of units requested, as well asthe PHA's objectives and plans for administering the Housing Choice (HCV) and Project Base Voucher (PBV) programs. The application is reviewed by HUD Headquarters and HUD Field Offices and ranked according to the PHA's administrative capability, the need for housing assistance, and other factors specified in a notice of funding availability. The PHAs must establish a utility allowance schedule for all utilities and other services. Units must be inspected using HUD-prescribed forms to determine if the units meet the Housing Quality Standards (HQS) of the HCV program. After the family is issued a HCV to search for a unit pursuant to attending a briefing and receiving an information packet, the family must complete and submit to the PHA a Request for Tenancy Approval when it finds a unit which is suitable for its needs. Initial PHAs will use a standardized form to submit portability information to the receiving PHA who will also use the form for monthly portability billing. PHAs and owners will enter into housing assistance payments (HAP) contract each providing information on rents, payments, certifications, notifications, and owner agreement in a form acceptable to the PHA. A Tenancy Addendum for the HCV program is included in the HAP contract as well as incorporated in the lease between the owner and the family. Families that participate in the Homeownership option will execute a statement regarding their responsibilities and execute contracts of sale including an additional contract of sale for new construction units. PHAs participating in the PBV program will enter into Agreements with owners for developing projects, HAP contracts with the existing and New Construction/Rehabilitation owners, a Statement of Family Responsibilities with the family and a lease addendum for execution between the family and the owner.

New requirements have been established for independent entities in both the HCV and PBV programs. In addition, new requirements have been established for the Housing Opportunities Through Modernization (HOTMA) rule of 2016. HOTMA made changes to both the definition of PHA-owned housing and several changes to the PBV program to conform with HOTMA requirements. As a result of these updates, changes have been made to the following forms: PBV HAP Contracts (both for existing housing (HUD–52530 A and B) and new Construction/Rehab (HUD 52531 A and B); PBV Tenancy Addendum; (HUD 53530c) and HCV HAP Contract (HUD 52641).

Other forms that are being updated are: The Funding Application (HUD 52515); the Request for Tenancy Approval (HUD–52517); and Allowances for Tenant-Furnished Utilities and Other Services (HUD 5267). Three new documents each will be added for the Family Unification Program application process and the HUD–VASH Application Process. Additionally, the forms will be updated to remove outdated references (such as those to the Certificate Program). Such updates do not result in an increase in burden hours.

This information collection also includes the Tribal HUD–VA Supportive Housing Program (Tribal HUD–VASH) provides rental assistance and supportive services to Native American veterans who are Homeless or At Risk of Homelessness living on or

near a reservation or other Indian areas. Housing assistance under this program is made available by grants to tribes and TDHEs that are eligible to receive IHBG funding under the Native American Housing and Self-Determination Act (25 U.S.C. 4212) (NAHASDA). Tribes request Tenant-Based and/or Project-Based Rental Assistance by the number of bedrooms in a rental unit. Grants and renewal funds are awarded based on the number rental units (Tenant-Based and Project-Based Rental Assistance) approved by HUD. Grants include an additional amount for administrative costs and eligible Homeless veterans receive case management services through the Department of Veterans Affairs. Information collection requirements for this demonstration program are based on the **Federal Register** Notice, ''Implementation of the Tribal HUD–VA Supportive Housing Program'' (FR 6091–N–01) and renewal funding criteria established in PIH Notice 2018–10, ''Procedural Guidance for Tribal HUD–VA Supportive Housing Renewal Grant Applications.''

Respondents (i.e., affected public): State and Local Governments, Tribes and Tribally-Designated Housing Entities, businesses or other non-profits.

Estimated Number of Respondents: 2,218 PHAs and Tribal HUD–VASH grantees.

Estimated Number of Responses: 3,680,527.

Frequency of Response: 1,659.39.

Average Hours per Response: 0.446507.

Total Estimated Burdens Hours: 1,643,381.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

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

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond: Including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: August 6, 2018.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2018–17918 Filed 8–17–18; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7001–N–44]

30-Day Notice of Proposed Information Collection: HUD Multifamily Energy Assessment

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for 30 days of public comment.

DATES: *Comments Due Date:* September 19, 2018.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax:202–395–5806, Email: *OIRA Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Inez C. Downs, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email *Inez.C.Downs@hud.gov,* or telephone 202–402–8046. This is not a toll-free number. Person with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Downs.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on April 11, 2018 at 83 FR 15592.

A. Overview of Information Collection

Title of Information Collection: HUD Multifamily Energy Assessment.

OMB Approved Number: 2502–0568.

Type of Request: Extension of currently approved collection.

Form Number: HUD–9614 and Certification of Compliance.

Description of the need for the information and proposed use: The purpose of this information collection is to assist owners of multifamily housing projects with assessing energy needs in an effort to reduce energy costs and improve energy conservation.

Respondents (i.e., affected public): Business and Other for profit.

Estimated Number of Respondents: 19,079.00.

Estimated Number of Responses: 19,079.00.

Frequency of Response: 1.00.

Average Hours per Response: 5.23407 hours.

Total Estimated Burdens: 99,860.82.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

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

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond: including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: August 8, 2018.

Inez C. Downs,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2018–17917 Filed 8–17–18; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7001–N–45]

30-Day Notice of Proposed Information Collection: Energy and Performance Information Center (EPIC)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for 30 days of public comment.

DATES: *Comments Due Date:* September 19, 2018.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax:202–395–5806, Email: *OIRASubmission@omb.eop.gov*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email *Colette.Pollard@hud.gov,* or telephone 202–402–3400. This is not a toll-free number. Person with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on April 19, 2018 83 FR 17424.

A. Overview of Information Collection

Title of Information Collection: Energy and Performance Information Center (EPIC).

OMB Approved Number: 2577–0274.

Type of Request: Revision of currently approved collection.

Form Number: N/A—all information collected electronically.

Description of the need for the information and proposed use: The EPIC data system automates the previous paper collection of the five-year plan and annual statement forms from grantees. These are required forms were collected in hard copy on Forms HUD 50075.1 and HUD 50075.2 under collection OMB control number 2577–0157. These forms also collect data on the eventual, actual use of funds; this data will be gradually collected electronically through the EPIC data system as well. Electronic collection will enable the Department to aggregate information about the way grantees are using Federal funding. Additionally, PHA grantees will be able to submit Replacement Housing Factor fund plans, the mechanism by which PHAs are allowed to accumulate special funds received based on units removed from the inventory from year to year. This information is presently collected in hard copy at the field office level; the EPIC data system will automate and centralize this collection in order to streamline the process and improve transparency. Furthermore, the EPIC data system will be loaded with Physical Needs Assessment (''PNA'') data. This data being in the system coupled with the electronic planning process will streamline grantee planning. The EPIC data system will collect information about the Energy Performance Contract (''EPC'') process, including the energy efficiency improvements. As the Department moves to shrink its energy footprint in spite of rising energy costs, clear and comprehensive data on this process will be crucial to its success. Tracking of the use of Federal funds paid through the Public Housing Capital Fund, the only Federal funding stream dedicated to the capital needs of the nation's last resort housing option, is crucial to understanding how the Department can properly and efficiently assist grantees in meeting this goal as well as assessing the Department's own progress. The EPIC data system will track development of public housing with Federal funds and through other means, including mixed-finance development.

Respondents (i.e., affected public): Members of Affected Public: State, Local or Local Governments and Non-profit organizations.

Estimated Number of Respondents: 2,950.

Estimated Number of Responses: 22,149.78.

Frequency of Response: 7.5084.

Average Hours per Response: 1.83724.

Total Estimated Burdens: 40,694.46 hours.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

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

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond: Including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: August 8, 2018.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2018–17916 Filed 8–17–18; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–P040–2017–1711–PH–1000–241A 14X.LLAZP04000.L1711.PH0000]

Notice of Availability of the Record of Decision for the Approved Resource Management Plan Amendment/ Environmental Impact Statement for Recreational Target Shooting in the Sonoran Desert National Monument, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD) for the approved Resource Management Plan (RMP) Amendment/ Environmental Impact Statement (EIS) for Recreational Target Shooting in the Sonoran Desert National Monument (SDNM) in Arizona.

DATES: This decision became operative on March 5, 2018.

ADDRESSES: The complete text of the ROD, along with the EIS and supporting

documents, is available on the BLM website at *https://go.usa.gov/xnFJm.* Copies of the ROD for Recreational Target Shooting in the SDNM have been sent to affected Federal, State, and local government agencies and to other stakeholders, and are available for public inspection at Lower Sonoran Field Office 21605 North 7th Avenue, Phoenix, Arizona 85027.

FOR FURTHER INFORMATION CONTACT: Darrel Wayne Monger, Monument Manager, telephone: 623–580–5683; address: Lower Sonoran Field Office, 21605 North 7th Avenue, Phoenix, Arizona 85027; email: *blm_az_sdnmtargetshooting@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The planning area covers nearly 496,400 surface acres of south-central Arizona and lies within Maricopa and Pinal Counties. Population centers adjacent to the planning area include metropolitan Phoenix, and the communities of Ajo, Goodyear, Buckeye, Gila Bend, Mobile, and Maricopa. The planning area encompasses Federal- and State-administered lands as well as private lands. The BLM's authority is limited to BLM-managed public lands and federally-owned minerals within the planning area. The BLM manages 486,400 surface acres of public lands in the planning area, as well as 461,000 acres of (sub-surface) mineral estate. The State of Arizona manages 3,900 surface acres in the planning area, with the remaining 6,100 surface acres being privately owned land.

The BLM prepared the Proposed RMP Amendment/Final EIS to address management of recreational target shooting in the SDNM. The Proposed RMP Amendment/Final EIS was required to analyze recreational target shooting in the SDNM due to a ruling by the U.S. District Court-District of Arizona that vacated portions of the 2012 ROD, Approved RMP, and Final EIS related to recreational target shooting throughout the SDNM, and remanded the decision to the BLM for reconsideration. The Court also required the BLM to ensure the Final EIS analyzed mitigation measures and cumulative impacts consistent with the order, with a deadline of March 5, 2018, to issue the ROD. The BLM Arizona State Director signed the ROD on March 5, 2018.

The Proposed RMP Amendment/Final EIS evaluated five alternatives in detail, including the No Action Alternative (Alternative A) and four action alternatives (Alternatives B, C, D, and E), based on public input and on analysis of the impacts of each of the alternatives. The five alternatives ranged from making the entire monument available for target shooting to making the entire monument unavailable for target shooting. All alternatives required compliance with a hierarchy of mitigation that includes: (1) Avoiding impacts to the maximum extent compatible with the goals of the alternative; (2) Minimizing any impacts that are not avoidable; and (3) Providing a range of responses commensurate with the level of unavoidable impacts. Alternative C was the BLM's proposed amendment. The Proposed RMP Amendment and Final EIS were published in the **Federal Register** on October 20, 2017 (84 FR 48847).

As a result of continued work with stakeholders and in response to comments from the public and cooperating agencies, the BLM determined that approximately 2,600 acres of additional land in the area is suitable for recreational target shooting. As such, the ROD approves a modified version of Alternative C, which identifies approximately 435,700 acres of land as available for recreational target shooting in the SDNM. The additional approximately 2,600 acres are located along the northern boundary of the SDNM within the Juan Bautista de Anza Recreation Management Zone, and were analyzed in Alternative A as available for recreational target shooting.

During the 30-day protest period, the BLM Director received five protest letters. All protests were resolved prior to issuance of the ROD.

No comments regarding potential inconsistencies with State and local plans, programs, and policies were received from the Governor's Office during the Governor's Consistency Review process.

(Authority: 40 CFR 1506.6, 40 CFR 1506.10, 43 CFR 1610.2, 43 CFR 1610.5)

Edward J. Kender,

Field Manager, Lower Sonoran Field Office.

[FR Doc. 2018–17877 Filed 8–17–18; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[12X.LLAK942000.L54200000.FR0000. LVDIL12L0530; FF097215]

Notice of Application for a Recordable Disclaimer of Interest for Lands Underlying the Fortymile River System, Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The State of Alaska (State) has filed an application with the Bureau of Land Management (BLM) for a Recordable Disclaimer of Interest (RDI) from the United States in those lands underlying the Fortymile River System located in the upper Yukon subregion, Alaska. The State asserts that the Fortymile River System was navigable and unreserved at the time of Alaska Statehood in 1959.

DATES: The BLM should receive all comments to this action on or before November 19, 2018.

ADDRESSES: You may submit comments by mail or email on the State of Alaska's application for an RDI or on the BLM draft ''Summary Report on Federal Interest in Lands underlying the Fortymile River System in Alaska.'' (Report) To file comments by mail, send to: RDI Program Manager (AK–942), Division of Lands and Cadastral, BLM Alaska State Office, 222 West 7th Avenue, #13, Anchorage, AK 99513. To submit comments by email, send to *anichols@blm.gov.*

FOR FURTHER INFORMATION CONTACT: Angie Nichols, RDI Program Manager, 222 West 7th Avenue, #13, Anchorage, AK 99513; 907–271–3359; *anichols@blm.gov;* or visit the BLM RDI website at *https://www.blm.gov/basic/programs-lands-and-realty-alaska-rdi-fortymile-fortymile-river.*

People who use a telecommunications device for the deaf (TDD) may call the Federal Relay System (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or a question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: On May 11, 2017, the State filed an application (FF–97215) for an RDI pursuant to Section 315 of the Federal Land Policy and Management Act of 1976 (FLPMA) and the regulations contained in 43 CFR Subpart 1864 for the lands underlying the Fortymile River System.

The State asserts that this river system was navigable at the time of Alaska Statehood. As such, the State contends that ownership of the lands underlying this river system automatically passed from the United States to the State in 1959 at the time of Statehood under the Equal Footing Doctrine; the Submerged Lands Act of 1953; the Alaska Statehood Act of 1959; and other title navigability law. Section 315 of FLPMA authorizes the BLM to issue an RDI when it determines that a record interest of the United States in lands has terminated by law or is otherwise invalid, and a disclaimer will help remove a cloud on title to such lands.

The State's application is for an RDI for all submerged lands underlying the portion of the Fortymile River System described below. Specifically, these are all submerged lands between the ordinary high water marks of the left and right banks of the Fortymile River, beginning sixty feet upstream of the international border with Canada, upstream to the confluence of the North and South Forks of the Fortymile River within section 10, township 8 south, range 30 east, Fairbanks Meridian, Alaska; all submerged lands between the ordinary high water marks of the left and right banks of the South Fork of the Fortymile River beginning at the confluence with the North Fork of the Fortymile River upstream to the confluence of the Mosquito and Dennison Forks of the Fortymile River within section 8, township 26 north, range 18 east, Fairbanks Meridian, Alaska; and all submerged lands between the ordinary high water marks of the left and right banks of the North Fork of the Fortymile River, beginning at its confluence with the South Fork of the Fortymile River, upstream to the dead-end slough which is a remnant of the Knik in section 20, township 6 south, range 29 east, Fairbanks Meridian, Alaska. The State listed the main stem of the Fortymile River's coverage on the USGS 1:63,360 series topographic map Eagle A–2 (1956), Eagle B–1 (1956) and Eagle B–2 (1956); for the North Fork of the Fortymile River, Eagle A–2 (1956), Eagle B–2 (1956) and Eagle B–3 (1956); and the South Fork of the Fortymile River is shown on the Eagle A–2 (1956) quadrangle.

Over time, the precise location of the submerged lands described above may vary between townships due to the ambulatory nature of these water bodies.

An RDI is a legal document through which the BLM disclaims the United States' interest in, or ownership of, specified lands, but the disclaimer does not grant, convey, transfer, or renounce any title or interest in the lands, nor does it release any tax, judgment, or lien. This Notice of Application is to inform the public of the pending application and the State's supporting evidence, as well as to provide the opportunity to comment or provide additional information to the BLM.

The BLM will not make a final decision on the merits of the State's application before November 19, 2018. During this 90-day period, interested parties may comment on the State's application, FF–97215, and supporting evidence. Interested parties may also comment on the BLM's draft report, which is available on the BLM's RDI website (see **FOR FURTHER INFORMATION CONTACT** above).

Copies of the State's application, supporting evidence, the BLM draft report, and comments, including names and street addresses of commenters, will be available for public review at the BLM Alaska Public Information Center (Public Room), 222 West 8th Avenue, Anchorage, Alaska, during regular business hours 8 a.m. to 4 p.m., Monday through Friday, except holidays.

Before including your address, phone number, email address, or other personally identifying information in your comment, you should be aware that your entire comment—including your personally identifiable information—may be made publicly available at any time. While you can ask the BLM in your comment to withhold your personally identifiable information from public review, we cannot guarantee that we will be able to do so.

If the BLM determines the State's evidence and any additional information the agency receives concerning the State's application is sufficient to reach a favorable determination, and neither the records nor a valid objection discloses a reason not to disclaim, the BLM may decide to approve the application for the RDI.

Authority: 43 CFR 1864.2.

Erika L. Reed,

Deputy State Director, Division of Lands and Cadastral, Alaska.

[FR Doc. 2018–17878 Filed 8–17–18; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[18X.LLID933000.L14400000.ET0000; IDI–38117]

Public Land Order No. 7872; Withdrawal of National Forest System Land for the Dump Creek Diversion Ditch, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This Order withdraws 107.02 acres of National Forest System land from location and entry under the United States mining laws for a period of 20 years to protect the Dump Creek Diversion Ditch within the Salmon National Forest. The purpose of this withdrawal is to ensure the continued conservation of the aquatic and riparian habitats, and to protect the Federal watershed investments in the Salmon River Drainage.

DATES: This Public Land Order takes effect on August 20, 2018.

FOR FURTHER INFORMATION CONTACT: Jeff Cartwright, Bureau of Land Management (BLM), Idaho State Office (208) 373–3885. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to reach the Bureau of Land Management contact during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This order withdraws the land on behalf of the United States Forest Service for the purpose of preserving the existing groundwater regime and to protect the integrity of the reclamation and watershed stabilization and investment of Federal funds within the Dump Creek project.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System land is hereby withdrawn from location and entry under the United States mining laws for a period of 20 years to preserve the existing groundwater regime and to protect the integrity of the reclamation and watershed stabilization and investment

of Federal funds within the Dump Creek project. The land will remain open to discretionary uses.

Salmon National Forest

Boise Meridian

T. 23 N., R. 20 E.,
Secs. 12, 13, and 24.

Beginning at USLM No. 4, Eureka Mining District, said Monument No. 4 being more particularly located in the unsurveyed NW¼SE¼ Section 24. From point of beginning, North 4°32′52″ East 5061.93 feet to Corner No. 1, the True Point of Beginning, said Corner being identical with Corner No. 1 Lemhi Gold Placer, as shown on Moose Creek Hydraulic Placer Mineral Survey Plat No. 3057. Thence North 0°01′ West, 4109.7 feet along the west line of Lemhi Gold Placer to a point at the intersection of line 1–2 of Rocky Mountain Placer, MS No. 1867, which point lies North 58°56′ West, 58.1 feet from Corner No. 1 of MS No. 1867 and said point being Corner No. 2 of herein described lands; Thence North 58°56′ West, along line 1–2 of MS No. 1867 for a distance of 817.35 feet to Corner No. 3; Thence South 0°01′ East, 4529.24 feet to Corner No. 4; Thence South 8°33′ East, 1877.1 feet to Corner No. 5; Thence South 89°49′ East, 883 feet to Corner No. 6, said Corner No. 6 being identical with Corner No. 4 of Moose Creek Hydraulic Placer MS 3057; Thence North 8°33′ West, 1877.1 feet along the west line of said Moose Creek Hydraulic Placer to Corner No. 7 said Corner No. 7 being identical with Corner No. 5 of MS No. 3057; Thence North 89°49′ West, 183 feet to Corner No. 1, the True Point of Beginning.

The area described aggregates 107.02 acres in Lemhi County.

2. The withdrawal made by this order does not alter the applicability of the general land laws governing the use of National Forest System land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) the Secretary determines that the withdrawal shall be extended.

Dated: July 9, 2018.

Joseph R. Balash,

Assistant Secretary, Land and Minerals Management.

[FR Doc. 2018–17870 Filed 8–17–18; 8:45 am]

BILLING CODE 3410–11–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–489 and 731–TA–1201 (Review)]

Drawn Stainless Steel Sinks From China; Determination

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that revocation of the countervailing and antidumping duty orders on drawn stainless steel sinks from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission, pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)), instituted these reviews on March 1, 2018 (83 FR 8887) and determined on June 4, 2018 that it would conduct expedited reviews (83 FR 30193, June 27, 2018).

The Commission made these determinations pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determinations in these reviews on August 14, 2018. The views of the Commission are contained in USITC Publication 4810 (August 2018), entitled *Drawn Stainless Steel Sinks from China: Investigation Nos. 701–TA–489 and 731–TA–1201 (Review).*

By order of the Commission.

Issued: August 15, 2018.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2018–17868 Filed 8–17–18; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

INTERNATIONAL TRADE COMMISSION

Summary of Commission Practice Relating to Administrative Protective Orders

AGENCY: U.S. International Trade Commission.

ACTION: Summary of Commission practice relating to administrative protective orders.

SUMMARY: Since February 1991, the U.S. International Trade Commission (''Commission'') has published in the **Federal Register** reports on the status of its practice with respect to violations of its administrative protective orders (''APOs'') under title VII of the Tariff Act of 1930, in response to a direction contained in the Conference Report to the Customs and Trade Act of 1990. Over time, the Commission has added to its report discussions of APO breaches in Commission proceedings other than under title VII and violations of the Commission's rules including the rule on bracketing business proprietary information (''BPI'') (the ''24-hour rule''). This notice provides a summary of breach investigations (APOB investigations) completed during calendar year 2017. This summary addresses an APOB investigation related to a proceeding under title VII of the Tariff Act of 1930. The Commission intends that this report inform representatives of parties to Commission proceedings as to some specific types of APO breaches encountered by the Commission and the corresponding types of actions the Commission has taken.

FOR FURTHER INFORMATION CONTACT: Ron Traud, Office of the General Counsel, U.S. International Trade Commission, telephone (202) 205–3427. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at (202) 205–1810. General information concerning the Commission can also be obtained by accessing its website (*https://www.usitc.gov*).

SUPPLEMENTARY INFORMATION: Representatives of parties to investigations or other proceedings conducted under title VII of the Tariff Act of 1930, section 337 of the Tariff Act of 1930, the North American Free Trade Agreement (NAFTA) Article 1904.13, and safeguard-related provisions such as section 202 of the Trade Act of 1974, may enter into APOs that permit them, under strict conditions, to obtain access to BPI (title VII) and confidential business information (''CBI'') (safeguard-related provisions and section 337) of other parties or non-parties. *See, e.g.,* 19 U.S.C. 1677f; 19 CFR 207.7; 19 U.S.C. 1337(n); 19 CFR 210.5, 210.34; 19 U.S.C. 2252(i); 19 CFR 206.17; 19 U.S.C. 1516a(g)(7)(A); and 19 CFR 207.100, *et. seq.* The discussion below describes an APO breach investigation that the Commission has completed during calendar year 2017, including a description of actions taken in response to this breach.

Since 1991, the Commission has published annually a summary of its actions in response to violations of

Commission APOs and rule violations. *See* 56 FR 4846 (February 6, 1991); 57 FR 12335 (April 9, 1992); 58 FR 21991 (April 26, 1993); 59 FR 16834 (April 8, 1994); 60 FR 24880 (May 10, 1995); 61 FR 21203 (May 9, 1996); 62 FR 13164 (March 19, 1997); 63 FR 25064 (May 6, 1998); 64 FR 23355 (April 30, 1999); 65 FR 30434 (May 11, 2000); 66 FR 27685 (May 18, 2001); 67 FR 39425 (June 7, 2002); 68 FR 28256 (May 23, 2003); 69 FR 29972 (May 26, 2004); 70 FR 42382 (July 22, 2005); 71 FR 39355 (July 12, 2006); 72 FR 50119 (August 30, 2007); 73 FR 51843 (September 5, 2008); 74 FR 54071 (October 21, 2009); 75 FR 66127 (October 27, 2010), 76 FR 78945 (December 20, 2011), 77 FR 76518 (December 28, 2012), 78 FR 79481 (December 30, 2013), 80 FR 1664 (January 13, 2015), 81 FR 17200 (March 28, 2016), and 82 FR 29322 (June 28, 2017). This report does not provide an exhaustive list of conduct that will be deemed to be a breach of the Commission's APOs. APO breach inquiries are considered on a case-by-case basis.

As part of the effort to educate practitioners about the Commission's current APO practice, the Commission Secretary issued in March 2005 a fourth edition of *An Introduction to Administrative Protective Order Practice in Import Injury Investigations* (Pub. No. 3755). This document is available upon request from the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, tel. (202) 205–2000 and on the Commission's website at *http://www.usitc.gov.*

I. In General

A. Antidumping and Countervailing Duty Investigations

The current APO form for antidumping and countervailing duty investigations, which was revised in March 2005, requires the applicant to swear that he or she will:

(1) Not divulge any of the BPI disclosed under this APO or otherwise obtained in this investigation and not otherwise available to him or her, to any person other than—

(i) Personnel of the Commission concerned with the investigation,

(ii) The person or agency from whom the BPI was obtained,

(iii) A person whose application for disclosure of BPI under this APO has been granted by the Secretary, and

(iv) Other persons, such as paralegals and clerical staff, who (a) are employed or supervised by and under the direction and control of the authorized applicant or another authorized applicant in the same firm whose application has been granted; (b) have a need thereof in connection with the investigation; (c) are not involved in competitive decision making for an interested party which is a party to the investigation; and (d) have signed the acknowledgment for clerical personnel in the form attached hereto (the authorized applicant shall also sign such acknowledgment and will be deemed responsible for such persons' compliance with this APO);

(2) Use such BPI solely for the purposes of the above-captioned Commission investigation or for judicial or binational panel review of such Commission investigation;

(3) Not consult with any person not described in paragraph (1) concerning BPI disclosed under this APO or otherwise obtained in this investigation without first having received the written consent of the Secretary and the party or the representative of the party from whom such BPI was obtained;

(4) Whenever materials *e.g.,* documents, computer disks, etc. containing such BPI are not being used, store such material in a locked file cabinet, vault, safe, or other suitable container (N.B.: Storage of BPI on so-called hard disk computer media is to be avoided, because mere erasure of data from such media may not irrecoverably destroy the BPI and may result in violation of paragraph C of this APO);

(5) Serve all materials containing BPI disclosed under this APO as directed by the Secretary and pursuant to section 207.7(f) of the Commission's rules;

(6) Transmit each document containing BPI disclosed under this APO:

(i) With a cover sheet identifying the document as containing BPI,

(ii) with all BPI enclosed in brackets and each page warning that the document contains BPI,

(iii) if the document is to be filed by a deadline, with each page marked ''Bracketing of BPI not final for one business day after date of filing,'' and

(iv) if by mail, within two envelopes, the inner one sealed and marked ''Business Proprietary Information—To be opened only by [name of recipient]'', and the outer one sealed and not marked as containing BPI;

(7) Comply with the provision of this APO and section 207.7 of the Commission's rules;

(8) Make true and accurate representations in the authorized applicant's application and promptly notify the Secretary of any changes that occur after the submission of the application and that affect the representations made in the application (*e.g.,* change in personnel assigned to the investigation);

(9) Report promptly and confirm in writing to the Secretary any possible breach of this APO; and

(10) Acknowledge that breach of this APO may subject the authorized applicant and other persons to such sanctions or other actions as the Commission deems appropriate, including the administrative sanctions and actions set out in this APO.

The APO form for antidumping and countervailing duty investigations also provides for the return or destruction of the BPI obtained under the APO on the order of the Secretary, at the conclusion of the investigation, or at the completion of Judicial Review. The BPI disclosed to an authorized applicant under an APO during the preliminary phase of the investigation generally may remain in the applicant's possession during the final phase of the investigation.

The APO further provides that breach of an APO may subject an applicant to:

(1) Disbarment from practice in any capacity before the Commission along with such person's partners, associates, employer, and employees, for up to seven years following publication of a determination that the order has been breached;

(2) Referral to the United States Attorney;

(3) In the case of an attorney, accountant, or other professional, referral to the ethics panel of the appropriate professional association;

(4) Such other administrative sanctions as the Commission determines to be appropriate, including public release of, or striking from the record any information or briefs submitted by, or on behalf of, such person or the party he represents; denial of further access to business proprietary information in the current or any future investigations before the Commission, and issuance of a public or private letter of reprimand; and

(5) Such other actions, including but not limited to, a warning letter, as the Commission determines to be appropriate.

APOs in safeguard investigations contain similar though not identical provisions.

B. Section 337 Investigations

The APOs in section 337 investigations differ from those in title VII investigations as there is no set form and provisions may differ depending on the investigation and the presiding administrative law judge. However, in practice, the provisions are often quite similar. Any person seeking access to

CBI during a section 337 investigation (including outside counsel for parties to the investigation, secretarial and support personnel assisting such counsel, and technical experts and their staff who are employed for the purposes of the investigation) is required to read the APO, agree to its terms by letter filed with the Secretary of the Commission indicating that he or she agrees to be bound by the terms of the Order, agree not to reveal CBI to anyone other than another person permitted access by the Order, and agree to utilize the CBI solely for the purposes of that investigation.

In general, an APO in a section 337 investigation will define what kind of information is CBI and direct how CBI is to be designated and protected. The APO will state which persons will have access to the CBI and which of those persons must sign onto the APO. The APO will provide instructions on how CBI is to be maintained and protected by labeling documents and filing transcripts under seal. It will provide protections for the suppliers of CBI by notifying them of a Freedom of Information Act request for the CBI and providing a procedure for the supplier to take action to prevent the release of the information. There are provisions for disputing the designation of CBI and a procedure for resolving such disputes. Under the APO, suppliers of CBI are given the opportunity to object to the release of the CBI to a proposed expert. The APO requires a person who discloses CBI, other than in a manner authorized by the APO, to provide all pertinent facts to the supplier of the CBI and to the administrative law judge and to make every effort to prevent further disclosure. The APO requires all parties to the APO to either return to the suppliers or destroy the originals and all copies of the CBI obtained during the investigation.

The Commission's regulations provide for certain sanctions to be imposed if the APO is violated by a person subject to its restrictions. The names of the persons being investigated for violating an APO are kept confidential unless the sanction imposed is a public letter of reprimand. 19 CFR 210.34(c)(1). The possible sanctions are:

(1) An official reprimand by the Commission.

(2) Disqualification from or limitation of further participation in a pending investigation.

(3) Temporary or permanent disqualification from practicing in any capacity before the Commission pursuant to 19 CFR 201.15(a).

(4) Referral of the facts underlying the violation to the appropriate licensing authority in the jurisdiction in which the individual is licensed to practice.

(5) Making adverse inferences and rulings against a party involved in the violation of the APO or such other action that may be appropriate. 19 CFR 210.34(c)(3).

Commission employees are not signatories to the Commission's APOs and do not obtain access to BPI or CBI through APO procedures. Consequently, they are not subject to the requirements of the APO with respect to the handling of CBI and BPI. However, Commission employees are subject to strict statutory and regulatory constraints concerning BPI and CBI, and face potentially severe penalties for noncompliance. *See* 18 U.S.C. 1905; title 5, U.S. Code; and Commission personnel policies implementing the statutes. Although the Privacy Act (5 U.S.C. 552a) limits the Commission's authority to disclose any personnel action against agency employees, this should not lead the public to conclude that no such actions have been taken.

II. Investigations of Alleged APO Breaches

Upon finding evidence of an APO breach or receiving information that there is a reason to believe one has occurred, the Commission Secretary notifies relevant offices in the agency that an APO breach investigation has commenced and that an APO breach investigation file has been opened. Upon receiving notification from the Secretary, the Office of the General Counsel (''OGC'') prepares a letter of inquiry to be sent to the possible breacher over the Secretary's signature to ascertain the facts and obtain the possible breacher's views on whether a breach has occurred.[1] If, after reviewing the response and other relevant information, the Commission determines that a breach has occurred, the Commission often issues a second letter asking the breacher to address the questions of mitigating circumstances and possible sanctions or other actions. The Commission then determines what action to take in response to the breach. In some cases, the Commission determines that, although a breach has occurred, sanctions are not warranted, and therefore finds it unnecessary to issue a second letter concerning what sanctions might be appropriate. Instead, it issues a warning letter to the individual. A warning letter is not considered to be a sanction. However, a warning letter is considered in a subsequent APO breach investigation.

Sanctions for APO violations serve three basic interests: (a) Preserving the confidence of submitters of BPI/CBI that the Commission is a reliable protector of BPI/CBI; (b) disciplining breachers; and (c) deterring future violations. As the Conference Report to the Omnibus Trade and Competitiveness Act of 1988 observed, ''[T]he effective enforcement of limited disclosure under administrative protective order depends in part on the extent to which private parties have confidence that there are effective sanctions against violation.'' H.R. Conf. Rep. No. 576, 100th Cong., 1st Sess. 623 (1988).

The Commission has worked to develop consistent jurisprudence, not only in determining whether a breach has occurred, but also in selecting an appropriate response. In determining the appropriate response, the Commission generally considers mitigating factors such as the unintentional nature of the breach, the lack of prior breaches committed by the breaching party, the corrective measures taken by the breaching party, and the promptness with which the breaching party reported the violation to the Commission. The Commission also considers aggravating circumstances, especially whether persons not under the APO actually read the BPI/CBI. The Commission considers whether there have been prior breaches by the same person or persons in other investigations and multiple breaches by the same person or persons in the same investigation.

The Commission's rules permit an economist or consultant to obtain access to BPI/CBI under the APO in a title VII or safeguard investigation if the economist or consultant is under the direction and control of an attorney under the APO, or if the economist or consultant appears regularly before the Commission and represents an interested party who is a party to the investigation. 19 CFR 207.7(a)(3)(B) and (C); 19 CFR 206.17(a)(3)(B) and (C). Economists and consultants who obtain access to BPI/CBI under the APO under the direction and control of an attorney nonetheless remain individually responsible for complying with the APO. In appropriate circumstances, for example, an economist under the direction and control of an attorney may be held responsible for a breach of the APO by failing to redact APO information from a document that is subsequently filed with the Commission

[1] Procedures for inquiries to determine whether a prohibited act such as a breach has occurred and for imposing sanctions for violation of the provisions of a protective order issued during NAFTA panel or committee proceedings are set out in 19 CFR 207.100–207.120. Those investigations are initially conducted by the Commission's Office of Unfair Import Investigations.

and served as a public document. This is so even though the attorney exercising direction or control over the economist or consultant may also be held responsible for the breach of the APO. In section 337 investigations, technical experts and their staff who are employed for the purposes of the investigation are required to sign onto the APO and agree to comply with its provisions.

The records of Commission investigations of alleged APO breaches in antidumping and countervailing duty cases, section 337 investigations, and safeguard investigations are not publicly available and are exempt from disclosure under the Freedom of Information Act, 5 U.S.C. 552. *See* 19 U.S.C. 1677f(g), 19 U.S.C. 1333(h), 19 CFR 210.34(c).

The two types of breaches most frequently investigated by the Commission involve the APO's prohibition on the dissemination of BPI or CBI to unauthorized persons and the APO's requirement that the materials received under the APO be returned or destroyed and that a certificate be filed indicating which action was taken after the termination of the investigation or any subsequent appeals of the Commission's determination. The dissemination of BPI/CBI usually occurs as the result of failure to delete BPI/CBI from public versions of documents filed with the Commission or transmission of proprietary versions of documents to unauthorized recipients. Other breaches have included the failure to bracket properly BPI/CBI in proprietary documents filed with the Commission, the failure to report immediately known violations of an APO, and the failure to adequately supervise non-lawyers in the handling of BPI/CBI.

Occasionally, the Commission conducts APOB investigations that involve members of a law firm or consultants working with a firm who were granted access to APO materials by the firm although they were not APO signatories. In many of these cases, the firm and the person using the BPI/CBI mistakenly believed an APO application had been filed for that person. The Commission determined in all of these cases that the person who was a non-signatory, and therefore did not agree to be bound by the APO, could not be found to have breached the APO. Action could be taken against these persons, however, under Commission rule 201.15 (19 CFR 201.15) for good cause shown. In all cases in which action was taken, the Commission decided that the non-signatory was a person who appeared regularly before the Commission and was aware of the requirements and limitations related to APO access and should have verified his or her APO status before obtaining access to and using the BPI/CBI. The Commission notes that section 201.15 may also be available to issue sanctions to attorneys or agents in different factual circumstances in which they did not technically breach the APO, but when their actions or inactions did not demonstrate diligent care of the APO materials even though they appeared regularly before the Commission and were aware of the importance the Commission placed on the care of APO materials.

Counsel participating in Commission investigations have reported to the Commission potential breaches involving the electronic transmission of public versions of documents. In these cases, the document transmitted appears to be a public document with BPI or CBI omitted from brackets. However, the confidential information is actually retrievable by manipulating codes in software. The Commission has found that the electronic transmission of a public document containing BPI or CBI in a recoverable form was a breach of the APO.

Counsel have been cautioned to be certain that each authorized applicant files within 60 days of the completion of an import injury investigation or at the conclusion of judicial or binational review of the Commission's determination a certificate that to his or her knowledge and belief all copies of BPI/CBI have been returned or destroyed and no copies of such material have been made available to any person to whom disclosure was not specifically authorized. This requirement applies to each attorney, consultant, or expert in a firm who has been granted access to BPI/CBI. One firm-wide certificate is insufficient.

Attorneys who are signatories to the APO representing clients in a section 337 investigation should inform the administrative law judge and the Commission's secretary if there are any changes to the information that was provided in the application for access to the CBI. This is similar to the requirement to update an applicant's information in title VII investigations.

In addition, attorneys who are signatories to the APO representing clients in a section 337 investigation should send a notice to the Commission if they stop participating in the investigation or the subsequent appeal of the Commission's determination. The notice should inform the Commission about the disposition of CBI obtained under the APO that was in their possession or they could be held responsible for any failure of their former firm to return or destroy the CBI in an appropriate manner.

III. Specific APO Breach Investigations

Case 1. The Commission determined that an attorney representing a party in a title VII investigation breached an APO when he failed to adequately supervise an employee who (1) made BPI available to unauthorized persons (both on CDs and on EDIS) and (2) failed to properly label CDs as containing BPI.

The attorney, an APO signatory, represented a party in a title VII investigation. The attorney supervised an employee (who was not an APO signatory) in preparing, filing, and serving the public version of a prehearing brief, but did not instruct that employee regarding the format in which the public version of the brief was to be filed and served. The hard copy of the brief had been redacted of BPI. In preparing the electronic version of the public version of the brief, the employee separately prepared the narrative and exhibits portions of the brief and then then electronically combined those two portions. The exhibits portion was prepared by manually scanning the redacted hard copy of the exhibits. However, the narrative portion was prepared by using Microsoft Word functionality and then converting the redacted document to a .pdf format, a process that made BPI available in the metadata. After combining the two portions, the employee filed the document on EDIS and also saved the file to CDs, which were not labeled as containing BPI. The CDs were then served on the parties on the Commission's public service list for the investigation, which included six persons who were not authorized to receive BPI. Thereafter, the attorney was informed by counsel for another party that the public version of the brief contained BPI in the metadata of the electronic version of the document. Personnel at the firm immediately contacted the Commission's Secretary's office and each recipient of the public version of the prehearing brief, and asked them to destroy all electronic versions of that document. The brief was available on EDIS for approximately six days before its removal.

The attorney, who is responsible for the employee's compliance with the APO, breached the APO because, (1) even though the filing and service of the public version of the prehearing brief may not have resulted in the actual disclosure of BPI to unauthorized persons, BPI was made available to unauthorized persons, and (2) the CDs that were served on the parties on the

Commission's public service list were not labeled as containing BPI.

In determining the appropriate action in response to the breach, the Commission considered mitigating factors, including that (1) the breach was unintentional and due to a technical oversight; (2) the attorney had not been found to have breached an APO over the past two years; (3) the attorney took immediate corrective measures upon learning of the disclosure by immediately contacting the Secretary's Office and the recipients of the brief; and (4) the attorney promptly reported the violation to the Commission. The Commission determined that no aggravating factors were present. The Commission issued a private warning letter to the attorney.

By order of the Commission.

Issued: August 14, 2018.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2018–17848 Filed 8–17–18; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Fire Protection Association

Notice is hereby given that, on July 31, 2018, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), National Fire Protection Association (''NFPA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, NFPA has provided an updated and current list of its standards development activities, related technical committee and conformity assessment activities. Information concerning NFPA regulations, technical committees, current standards, standards development and conformity assessment activities are publicly available at *nfpa.org*.

On September 20, 2004, NFPA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on October 21, 2004 (69 FR 61869).

The last notification was filed with the Department on May 8, 2018. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 25, 2018 (83 FR 24348).

Suzanne Morris

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2018–17899 Filed 8–17–18; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Spectrum Consortium

Notice is hereby given that, on August 3, 2018, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), National Spectrum Consortium (''NSC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Numerati Partners, LLC, New York, NY; Avionics Test & Analysis Corporation, Niceville, FL; George Mason University, Fairfax, VA; Science Applications International Corporation (SAIC), Reston, VA; Southern Research, Birmingham, AL; Parsons Government Services Inc., Pasadena, CA; Dell Federal Systems, L.P., Round Rock, TX; Sentar, Inc., Huntsville, AL; SCI Technology, Inc., Huntsville, AL; Pacific Star Communications, Inc., Portland, OR; COMINT Consulting LLC, Golden, CO; C6I Services Corp., Chesterfield, NJ; Comtech EF Data, Tempe, AZ; Vision Engineering Solutions, Inc., Merritt Island, FL; Vision Engineering Solutions, Inc., Merritt Island, FL; Comtech Mobile Datacom Corporation, Germantown, MD,; and EFW, Inc., Fort Worth, TX, have been added as parties to this venture.

Also, Fibertek, Inc., Herndon, VA; and University of Nevada, Reno, VA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NSC intends to file additional written notifications disclosing all changes in membership.

On May 24, 2014, NSC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 4, 2014 (72 FR 65424).

The last notification was filed with the Department on May 14, 2018. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 19, 2018 (83 FR 28449).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit Antitrust Division.

[FR Doc. 2018–17900 Filed 8–17–18; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Houston Maintenance Clinic; Decision and Order

On September 30, 2016, Administrative Law Judge Charles Wm. Dorman (hereinafter, ALJ) issued Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision (hereinafter, R.D.). Only Houston Maintenance Clinic (hereinafter, Respondent) filed exceptions (hereinafter, Resp. Exceptions), and its filing was timely. Having reviewed the entire record, including Resp. Exceptions, and modified the ALJ's R.D., I adopt the modified R.D. and find that none of Resp. Exceptions has merit.

Respondent's First Exception

Respondent's first exception states that R.D. ''Finding of Fact 40 should be amended to include the first sentence in . . . [Respondent's owner's] letter, GE 27[,] that states as follows[,] 'The facility has kept a systematic ongoing accurate daily dispensing record as required by title 21 C.F.R. 1304.03.' '' [1] Resp. Exceptions, at 1. The support Respondent provided for this exception is that, ''The daily dosing records . . . are required and these were kept without disruption.'' *Id.*

First, R.D. Finding of Fact 30, citing GE–27, already states that, ''Around the time of the [2006] inspection, . . . [Respondent] kept ongoing, systematic daily dispensing records'' [footnote omitted]. Thus, much of the content of the sentence that Respondent's first exception proposes is already found in Finding of Fact 30. Only the assertions that Respondent ''has kept . . .

[1] Finding of Fact 40 and, presumably, Respondent's first exception concern the 2006 inspection.

accurate'' daily dispensing records ''as required by title 21 C.F.R. 1304.03'' do not appear in Finding of Fact 30. Respondent's first exception does not mention Finding of Fact 30 and does not explain why it reiterates statements found in Finding of Fact 30.

Second, the Agency's regulation concerning exceptions requires that supporting reasons, specific citations to the evidence in the record, and applicable authorities be included with exceptions. The regulation states that, ''The party shall include a statement of supporting reasons for such exceptions, together with evidence of record (including specific and complete citations of the pages of the transcript and exhibits) and citations of the authorities relied upon.'' 21 CFR 1316.66(a) (1979).

Respondent's first exception does not comply with the Agency's regulation because it does not ''include . . . evidence of record (including specific and complete citations of the pages of the transcript and exhibits).'' *Id.* Instead, it simply asserts that ''daily dosing records . . . were kept without disruption.'' Resp. Exceptions, at 1. It does not provide support from evidence in the record that Respondent ''has kept . . . accurate'' daily dispensing records ''as required by title 21 CFR 1304.03.'' Thus, I find that Respondent's first exception does not comply with the Agency's regulation. 21 CFR 1316.66(a) (1979).

Third, the sentence that Respondent proposes for addition to the R.D.'s 40th Finding of Fact is taken from Respondent's written response (GE–27) to the Drug Enforcement Administration (hereinafter, DEA or Government) Letter of Admonition (GE–26) sent after the 2006 inspection. The 2006 inspection is addressed in subparagraph 2.c. of the Order to Show Cause (hereinafter, OSC). In pertinent part, the OSC alleges that Respondent failed ''to maintain and keep accurate records (daily dispensing logs) for controlled substances.'' OSC, at 2. I am not sustaining this OSC allegation due to insufficient evidence in the record: ''[T]he Government did not enter any evidence specifically showing that . . . [Respondent's] daily dispensing records were inadequate at the time of the 2006 inspection.'' [2] R.D., at 39. Respondent's first exception does not mention or acknowledge that the ALJ recommended against sustaining this OSC allegation. Respondent does not explain why it proposes an exception concerning an allegation that the ALJ recommended against sustaining.

Fourth, it does not follow from the Government's lack of proof concerning the inadequacy of Respondent's daily dispensing records at the time of the 2006 inspection that Respondent actually kept daily dispensing records that were accurate and in compliance with Agency regulations. As already discussed, Respondent's first exception does not cite to evidence in the record that provides a basis for me to find that Respondent did keep daily dispending records that were accurate and in compliance with Agency regulations at the time of the 2006 inspection.

For all of the above reasons, I reject Respondent's first exception.

Respondent's Second Exception

Respondent's second exception states that R.D. ''Finding of Fact 87 should be amended to include the fact that the investigators' variance computations were incorrect by at least 160,000 mgs in the methadone diskettes.'' [3] Resp. Exceptions, at 1. Respondent cites ''Tr. 513'' to support this exception.

First, Respondent's second exception does not comply with the Agency's exception regulation because it does not ''include a statement of supporting reasons.'' 21 CFR 1316.66(a) (1979). Instead, it simply advises that ''Respondent believes'' that ''Finding of Fact 87 should be amended.'' [4] Resp. Exceptions, at 1. I find that Respondent's second exception also does not comply with the applicable Agency regulation. 21 CFR 1316.66(a) (1979).

Second, the only support Respondent provides for its stated ''belief'' that the 87th Finding of Fact ''should be amended'' is its citation to page 513 of the hearing transcript. Respondent does not, however, specify the particular portion of page 513 that is relevant or discuss why that material supports its second exception.

Hearing transcript page 513 concerns the cross-examination by Respondent's counsel of one of the DEA Diversion Investigators (hereinafter, DI) assigned to the more recent inspections of Respondent. On lines 18 through 24, Respondent's counsel elicits testimony from the DI that ''[i]t looks like'' there ''may have been an error in . . . [the] spreadsheet'' of ''160,000 milligrams of methadone.'' Tr. 513. This testimony appears either to refer to page 2 of GE–9, where there is a blank space in the ''Total Dosage Units Received'' column for ''Methadone'' received on June 24, 2014, or to page 1 of GE–9.[5] I see no reference on page 513 to ''variance computations,'' let alone to variance computations being ''incorrect by at least 160,000 mgs in the methadone diskettes'' as Respondent's second exception asserts. Thus, the hearing transcript page cited in Respondent's second exception is not evidentiary support for Respondent's proposed amendment to Finding of Fact 87.

Third, Respondent's second exception concerns Respondent's ''belief'' that 1,200,050 dosage units, the amount of variance in its methadone diskettes calculated by the Government during the 2014 inspection, is not accurate. Respondent does not, however, point to any evidence in the record stating the correct amount of variance. Even more significantly, though, Respondent's second exception clearly acknowledges that Respondent's controlled substance inventories included a variance in its methadone diskette inventory for the 2014 inspection time period.

I am sustaining the OSC allegation that the 2014 inspection found variances in Respondent's controlled substance inventories of methadone diskettes, liquid methadone, buprenorphine 2 mg tablets, and buprenorphine 8 mg tablets. R.D., at 45. As Respondent asserts that the Government's variance computations were incorrect ''by at least 160,000 mgs,'' it is acknowledging the existence of variances. That acknowledgement supports my conclusion, concerning the 2014 inspection, that ''Respondent failed to maintain complete and accurate records of controlled substances received, sold, and delivered, and that there was a variance in . . . [Respondent's] controlled substance inventory.'' R.D., at 45. I calculated the variance in Respondent's methadone diskette inventory based on figures that account for the apparent 160,000 mg math error. Although the recalculated variance is smaller than the figure on the first page of GE–9, it does not change my findings concerning the 2014 inspection or my decision to revoke.

For all of the above reasons, I reject Respondent's second exception.

[2] There is evidence in the record that, ''up until the time of the 2006 inspection,'' Respondent ''kept meticulous daily dispensing records.'' R.D., at 39.

[3] Finding of Fact 87 concerns the 2014 inspection.

[4] It does cite to page 513 of the hearing transcript, but it does not provide a pinpoint citation to what it considers to be the relevant material on that page.

[5] Although not specifically addressed on page 513, other portions of the hearing transcript indicate that the number for the blank space on page 2 of GE–9 in the ''Total Dosage Units Received'' column for ''Methadone'' received on June 24, 2014 is the product of the ''Quantity Received (Pkg),'' (40), and the ''Package Size,'' (4,000).

Order

Pursuant to 28 CFR 0.100(b) (2018) and the authority thus vested in me by 21 U.S.C. 824(a) (Westlaw through Pub. L. No. 115–223) in conjunction with 21 U.S.C. 823(g)(1) (Westlaw through Pub. L. No. 115–223), I order that DEA Certificate of Registration No. RH0208567 issued to Houston Maintenance Clinic be, and it hereby is, revoked. I further order that any pending application of Houston Maintenance Clinic for renewal or modification of its registration be, and it hereby is, denied. This Order is effective September 19, 2018.

Dated: August 8, 2018.

Uttam Dhillon,

Acting Administrator.

Paul A. Dean, Esq., for the Government
Andre D'Souza, Esq., for the Respondent

RECOMMENDED RULINGS, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION OF THE ADMINISTRATIVE LAW JUDGE

Charles Wm. Dorman, Administrative Law Judge. On September 10, 2015, the Drug Enforcement Administration (''DEA'' or ''Government'') served Houston Maintenance Clinic (''Respondent'' or ''HMC'') with an Order to Show Cause (''OSC'') seeking to revoke the Respondent's DEA Certificate of Registration (''COR''), Number RH0208567. Administrative Law Judge Exhibits (''ALJ–'') 1–2. In response, the Respondent requested a hearing before an Administrative Law Judge. ALJ–3. That hearing was held in Houston, Texas on June 13 through 16, 2016. The issue currently before the Administrator is whether the DEA should revoke the Respondent's COR, pursuant to 21 U.S.C. 824(a), and deny any pending applications for renewal or modification of its registration, pursuant to 21 U.S.C. 823(g)(1). The following recommendations are based on my consideration of the entire administrative record, including all of the testimony, admitted exhibits, and the oral and written arguments of counsel.

ALLEGATIONS

1. On April 17, 1997, the DEA discovered that the HMC failed to record the amount of controlled substances received, failed to keep DEA 222 Order Forms (''222 Forms''), and failed to properly maintain daily dispensing records, in violation of 21 C.F.R. 1304.03, 1304.04, 1304.21, 1304.22, and 1304.24.1.[6] ALJ–1, at 1–2. On that date, the DEA found variances in the HMC's controlled substance inventory. ALJ–1, at 2. Subsequently, the HMC received a letter of admonition detailing its violations. ALJ–1, at 2.

2. On December 6, 1999, the DEA discovered that the HMC failed to maintain complete and accurate records of Schedule II controlled substances received and dispensed, in violation of 21 U.S.C. 827(a)(3) and 21 C.F.R. 1304.21(a). ALJ–1, at 2. On that date, the DEA found variances in the HMC's controlled substance inventory. ALJ–1, at 2. Subsequently, the HMC entered a Memorandum of Understanding, acknowledging its violations. ALJ–1, at 2.

3. On September 8 and 11, 2006, the DEA discovered that the HMC failed to keep and maintain daily dispensing logs of controlled substances, in violation of 21 C.F.R. 1304.21(a). ALJ–1, at 2. On that date, the DEA found variances in the HMC's controlled substance inventory. ALJ–1, at 2. Subsequently, the HMC received a letter of admonition detailing its violations. ALJ–1, at 2.

4. On October 11 and 13, 2011, the DEA discovered that the HMC failed to provide records in a timely manner, failed to maintain complete and accurate controlled substance receipt records, failed to conduct a biennial inventory, failed to preserve 222 Forms for two years, improperly allowed an unauthorized person to sign 222 Forms, failed to execute a power of attorney to allow an alternate person to sign 222 Forms, and failed to completely and accurately complete daily dispensing logs, in violation of 21 C.F.R. 1304.04(f)(l)(2), 1304.04, 1304.11(a), 1305.04, 1305.17(a), 1305.17(c), 1305.05, and 1305.24(a).[7] ALJ–1, at 2. The HMC also failed to maintain adequate physical security of controlled substances. ALJ–1, at 2. Further, the DEA was unable to conduct an audit during the inspection because of the HMC's recordkeeping deficiencies. ALJ–1, at 2. On April 3, 2013, the HMC entered a settlement agreement with the United States based on these violations. ALJ–1, at 2. By the terms of the settlement agreement, the HMC agreed to pay a civil monetary penalty, but denied culpability or wrongdoing. ALJ–1, at 2.

5. On October 14, 2014, the DEA discovered that the HMC failed to: maintain complete and accurate records of each controlled substance received, sold, and delivered; conduct a biennial inventory and an inventory of buprenorphine; preserve 222 Forms; indicate the date of receipt of 222 Forms; execute a power of attorney authorizing an alternate person to sign 222 Forms; and complete accurate daily dispensing logs, in violation of 21 C.F.R. 1304.21(a), 1304.11(c), 1304.11(b), 1305.17(a), 1305.13(e), 1305.05, and 1304.24(a). ALJ–1, at 3. On that date, the DEA found variances in the HMC's controlled substance inventory. ALJ–1, at 3.

STIPULATIONS OF FACT

The Government and the Respondent stipulated to the following facts:

1. Respondent is registered with the DEA as a narcotic treatment program in Schedules II and III under DEA Registration RH0208567 at 4608 Main Street, Houston, Texas 77002.

2. DEA Registration Number RH0208567 expires by its terms on October 31, 2016.

WITNESSES

The Government presented its case-in-chief through the testimony of six witnesses. First, the Government called a DEA Unit Chief (''Unit Chief''). Tr. 27–84. The Unit Chief previously worked in the DEA's Houston Division Office for approximately eight years. Tr. 28. Along with two other DEA investigators, the Unit Chief participated in the DEA's inspection of the HMC in 1999. Tr. 28. At that time, the Unit Chief was a trainee, and the 1999 inspection was one of the first methadone clinic inspections in which she had participated. Tr. 28, 31. The Unit Chief assisted with the 1999 inspection by counting the HMC's on-hand inventory and by helping with the controlled substances audit. Tr. 29, 38–39. The Unit Chief also recalled meeting with Dr. Ozumba during that inspection, but was unsure if anyone else was present during that meeting. Tr. 29–30. The Unit Chief added up purchase records, dispensing records, and the closing inventory for the audit's computation chart, Government's Exhibit (''GE-'') 30. Tr. 80–82. Through the Unit Chief's testimony, the Government authenticated and successfully offered into evidence GE–28–30 and 32. *See* Tr. 27–84. I find all of these exhibits to be

[6] As the Government notes in its Post-Hearing Brief, ALJ–27, the code sections cited in the OSC are to the current version of the C.F.R., rather than the version in effect at the time of the alleged violations. The substance of the code remains the same. For the sake of clarity and simplicity, the current version of the C.F.R. is cited throughout this Recommended Decision.

[7] 21 C.F.R. 1305.24(a) discusses maintenance of ordering records using an electronic central processing system. The facts of this case do not relate to any alleged violations dealing with ordering records maintained on an electronic central processing system. Therefore, the Government's allegation that the Respondent's conduct on October 11 and 13, 2011, and October 14, 2014, violated 21 C.F.R. 1305.24(a) is **NOT SUSTAINED**.

accurate, authentic, and meriting credibility.

While I find the Unit Chief to be a generally credible witness, several key factors detract from her overall credibility. First, at the time of the 1999 inspection, the Unit Chief was a trainee, who had not yet attended the DEA academy. Tr. 28. Second, during her testimony, I sensed that she was testifying based upon her experience of how DEA conducts inspections, not on her specific recollection of what happened during the inspection in 1999. I even addressed that concern on the record. Tr. 40–41, 81. Third, she testified that Dr. Ozumba was present during the inspection, but she was not sure if anyone else representing the Respondent was there. Tr. 29–30. She recalls Dr. Ozumba, in part, because he had a ''very deep voice,'' and she attempted to mimic his voice during her testimony. Tr. 47. She also testified that Dr. Ozumba signed the Notice of Inspection in 1999. Tr. 30. Dr. Ozumba, however, did not sign the Notice of Inspection; it was signed by another employee of the HMC who was there. Tr. 47; *see also* GE–28. Furthermore, when Dr. Ozumba testified, given the Unit Chief's earlier testimony and mimicking, I was struck by the fact that Dr. Ozumba does not have a deep voice at all. Fourth, the Unit Chief's testimony was internally inconsistent concerning whether a closing interview was conducted. At first, she testified that she participated in a closing interview with the owners of the clinic. Tr. 38–39. Later, the Unit Chief testified that she could not recall if a closing inventory had been conducted. Tr. 78. Finally, this inspection occurred over seventeen years ago. While I find that the Unit Chief's testimony generally was forthright and honest, where her testimony directly conflicts with the testimony of other witnesses, I give the Unit Chief's testimony less weight.

Second, the Government presented the testimony of Latoya Latrese McSwain, L.P.N. (''McSwain''). Tr. 85–147. McSwain was employed by the HMC as a dosing nurse from January 2014 through January 2015. Tr. 86, 102. McSwain was familiar with the manner in which controlled substances were inventoried at the HMC. Tr. 112. McSwain signed and initialed parts of the HMC's daily dispensing record. *See* Respondent's Exhibit (''RE-'') A, at 85, 91. Along with the HMC's receptionist, McSwain was at the clinic when DEA investigators conducted an inspection in 2014. Tr. 87. Before Dr. Ozumba arrived at the HMC during that inspection, the DEA Diversion Investigator Case Agent (''Case Agent'') spoke with McSwain. Tr. 92, 110. During the inspection, McSwain helped thoroughly search the HMC for the documents requested by DEA. Tr. 89–90. I find McSwain's testimony to be detailed, thorough, honest, and internally consistent. Therefore, with one exception, I merit her testimony as credible in this Recommended Decision. I do not credit her testimony concerning the time the DEA investigators arrived to conduct the inspection on October 14, 2014.

Third, the Government presented the testimony of Natalie Benjamin Farr Franks (''Franks''). Tr. 148–79. Franks worked for the HMC as a dispensing nurse from February 2010 through June 2012, except for a six-month period in which Franks took maternity leave. Tr. 149–50. As a dispensing nurse, Franks handled recordkeeping, administered medication, and inventoried the HMC's controlled substances. Tr. 151–52. I find Franks' testimony to be detailed, thorough, honest, and internally consistent. Therefore, I merit her testimony as credible in this Recommended Decision.

Fourth, the Government presented the testimony of a DEA Group Supervisor (''Group Supervisor''). Tr. 187–264. The Group Supervisor has worked for the DEA for about 10 years. Tr. 188. In January 2005, the Group Supervisor began working as a diversion investigator at the DEA's Houston office. Tr. 188. On September 8, 2006, the Group Supervisor participated in a scheduled inspection of the HMC. Tr. 192. During that inspection, the Group Supervisor observed the physical audit of the HMC's controlled substances and provided calculations to create a closing inventory, GE–23. Tr. 204–06. Through the Group Supervisor's testimony, the Government authenticated and successfully offered into evidence GE–22–26. *See* Tr. 187–264. I find all of these exhibits to be accurate, authentic, and meriting credibility. I also find the Group Supervisor's testimony to be detailed, thorough, honest, and internally consistent. Therefore, I merit her testimony as credible in this Recommended Decision.

Fifth, the Government presented the testimony of the Case Agent. Tr. 265–610. The Case Agent has worked for the DEA as a diversion investigator for six years. Tr. 266. The Case Agent investigates DEA registrants to verify their compliance with the Controlled Substances Act, and she has participated in over 100 scheduled investigations. Tr. 266–67. The Case Agent formerly worked in the DEA's Houston office, and she currently works in the Miami office. Tr. 266. The Case Agent participated in the DEA's October 2011 and October 2014 scheduled inspections of the HMC. Tr. 271–72. Through the Case Agent's testimony, the Government authenticated and successfully offered into evidence GE–3–6, 8–21, 31, and 33–37. *See* Tr. 265–610. I find all of these exhibits to be accurate, authentic, and meriting credibility. There is credible evidence of record that the Case Agent found dealing with the Ozumba's to be frustrating and that she was brusque in her dealing with them. There is also credible evidence that the Case Agent is a professional and well-trained DEA investigator. Therefore, I do not find that her frustration or brusqueness adversely impacts her credibility in this case. I find the Case Agent's testimony to be detailed, thorough, honest, and internally consistent. Therefore, I merit her testimony as credible in this Recommended Decision.

Sixth, the Government presented the testimony of Cecilia Ozumba (''Mrs. Ozumba''). Tr. 643–938. The Respondent also elicited direct examination testimony from Mrs. Ozumba. Tr. 813. Mrs. Ozumba was educated and trained in clinical psychology and chemical dependence counseling; she is not educated and trained as a regulatory specialist. Tr. 814, 817, 821, 828. Through Mrs. Ozumba's testimony, the Government authenticated and successfully offered into evidence GE–7 and 27. *See* Tr. 643–938. Additionally, through Mrs. Ozumba's testimony, the Respondent authenticated and successfully offered into evidence RE–A, B, pages one through four of RE–C, RE–E, G, H, X, Z, and BB.

During her testimony, Mrs. Ozumba seemed confused, had difficulty recalling pertinent information, and at times was evasive, particularly during the initial direct examination by Government counsel. For example, she was confused concerning: who had signed the DEA application for the HMC; the 1999 inspection; the sequence of the 2011 inspection; and how RE–C had been created. Tr. 646, 685–89, 750, 787–99. Confusion persisted throughout her first day of testimony, with examples too numerous to cite. She was not sure of: the number of times the HMC had been inspected by DEA; when the HMC started using buprenorphine; when RE–BB was provided to the Government; what documents she brought with her to the 2011 informal hearing; and whether the DEA investigators took documents away from the HMC during the 2011 inspection. Tr. 670, 672, 685–89, 716, 738–39, 754–55. I also found her testimony evasive about the training she received concerning

DEA regulations. Tr. 663–69. At times, her testimony was internally inconsistent, such as when she testified that she was not sure if the DEA inspectors removed documents from the HMC during the 2011 inspection, and then later testified that they did, and when testifying that Dr. Ozumba was both there and not there during the 2011 inspection. Tr. 754–56. In addition, Mrs. Ozumba frequently had trouble finding her place on exhibits when being questioned by counsel; in fact, to speed the process along, I highlighted one of the exhibits for her. Tr. 648, 680, 707–08, 801–03 (indication of ''pause''), 833–34, 875, 896, 919. While these factors detract from Mrs. Ozumba's overall credibility as a witness, I found her to be truthful concerning her own medical issues, the recordkeeping procedures she had in place in the HMC, and her belief that the deficiencies related to the 1997, 1999, and 2006 inspections had been ''resolved.'' Where her testimony conflicts with the testimony of other witnesses, I give her testimony less weight.

The Respondent presented its case through the testimony of four witnesses, including Mrs. Ozumba. The Respondent presented the testimony of a second witness, Sharon Bultron, R.N. (''Bultron'').[8] Tr. 612–43. Bultron has been a nurse for 30 years and began working for the HMC in June 2006; she still currently works for the HMC on a part-time basis. Tr. 613–14, 623. Bultron was present during the 2006 DEA inspection. Tr. 629. Bultron testified that she did not participate in the 2006 inventory. Tr. 631. When she examined GE–23, however, she concluded that she had assisted with the inventory. Tr. 634–35; *see* GE–23.[9] I find Bultron's testimony to be detailed, thorough, honest, and internally consistent. Therefore, I merit her testimony as credible in this Recommended Decision.

Third, the Respondent presented the testimony of William ''Rusty'' Garnett (''Garnett''). Tr. 947–1007. Garnett testified that he currently works as a ''glorified administrator'' for the HMC; specifically, he runs the front desk and has contact with patients and vendors. Tr. 948. Garnett worked for the HMC from May 2012 through May 2013, and returned to work there in December 2015. Tr. 949–50. Garnett has always worked for the HMC as a part-time employee, working six days a week. Tr. 973. Garnett was not present at the HMC during any of the DEA's inspections. Tr. 974. Garnett personally receives daily dispensing numbers from the dispensing nurses and enters those numbers into a digital perpetual inventory. Tr. 949. Garnett testified that he created RE–X, a document that Mrs. Ozumba claims to have created in 2006. Tr. 935, 963, 1004. I find Garnett's testimony to be detailed, thorough, honest, and internally consistent. Therefore, I merit his testimony as credible in this Recommended Decision.

Fourth, the Respondent presented the testimony of Dr. Amos Ozumba (''Dr. Ozumba''). Tr. 1008–36. Dr. Ozumba is a psychotherapist and was the original DEA registrant for the HMC. Tr. 1008–09. Dr. Ozumba's testimony was at times confusing, internally inconsistent, and inconsistent with the testimony of other witnesses. For example, Dr. Ozumba testified about the DEA's 2011 inspection, first saying that he was called by McSwain, but the Respondent's counsel pointed out that Franks, not McSwain, was the dispensing nurse at the HMC at the time. Tr. 1009–10. In addition, despite several attempts by Respondent's counsel to clarify whether Dr. Ozumba was testifying about the 2011 or 2014 inspection, Dr. Ozumba erroneously remained firm that he was testifying about the 2011 inspection when, in reality, he described details from the 2014 inspection. Tr. 1009–12. Further, Dr. Ozumba testified both that he explained to the investigators that his wife was sick, that she was present for the inspection, and, at a later point, that he could not recall if Mrs. Ozumba was present. Tr. 1010, 1012, 1027. Dr. Ozumba also testified about what the DEA inspectors did *after* he left the HMC. Tr. 1012. For these reasons, and for further reasons discussed *infra,* with one exception, I do not merit Dr. Ozumba's testimony as credible where it conflicts with the testimony of other witnesses. The one exception concerns his testimony that the closing inventory had been taken prior to his arrival at the HMC on October 14, 2014. Tr. 1017–18; *see* GE–11 (documenting that the closing inventory was taken at 9:15 a.m.).

Following the Respondent's case-in-chief, the Government presented the testimony of two rebuttal witnesses. First, the Government presented the testimony of a DEA diversion investigator (''DI''). Tr. 1038–52. The DI has worked in the DEA's Houston office for the past five years. Tr. 1039. The DI participated in the DEA's inspections of the HMC in 2011 and 2014. Tr. 1039. I find the DI's testimony to be detailed, thorough, honest, and internally consistent. Therefore, I merit her testimony as credible in this Recommended Decision, except for the following issues: whether McSwain was still dosing patients when the DEA investigators arrived; and whether a closing inventory was taken prior to Dr. Ozumba's arrival at the clinic on October 14, 2014. *See* GE–11 (documenting that the closing inventory was taken at 9:15 a.m.).

Second, the Government presented the testimony of Assistant United States Attorney (''AUSA'') Jill Venezia (''Venezia''). Tr. 1053–71. Venezia has been an AUSA in Houston since 1997. Tr. 1054. In 2013, Venezia handled a case against the Respondent on behalf of the United States Attorney's Office. Tr. 1054–55. That case concerned the HMC's alleged recordkeeping violations discovered during the 2011 inspection. Tr. 1055. I find Venezia's testimony to be detailed, thorough, honest, and internally consistent. Therefore, I merit her testimony as credible in this Recommended Decision.

The Respondent attempted to introduce the testimony of a rebuttal witness. That witness had attended every session of the hearing. I excluded the witness, citing the sequestration order that I issued pursuant to the Respondent's request at the beginning of the hearing. Tr. 1072–73.

The factual findings below are based on a preponderance of the evidence, including the detailed, credible, and competent testimony of the aforementioned witnesses, the exhibits entered into evidence, and the record before me.

FACTUAL FINDINGS

I. Background on the Respondent

1. The HMC is a narcotic treatment program in Houston, Texas. *See* Stipulation (''Stip.'') 1; GE–1. The HMC opened in 1995 or 1996. Tr. 824. When the HMC opened, it was a small clinic that participated in client referral for job retraining. Tr. 825–26. The HMC also provided counseling in life skills, stress management, and relapse prevention. Tr. 825–26. When the HMC first began its operations, Mrs. Ozumba did not run the clinic. Tr. 824.

2. The HMC employed a medical director, a counselor, dispensing nurses, and an office manager. Tr. 826–27. The HMC dispensed liquid methadone[10] and methadone diskettes to its patients.[11] *See* Tr. 157. The HMC also

[8] With the consent of both parties, the testimony of the Respondent's witness, Sharon Bultron, was taken out of order at the Respondent's request. Tr. 612.

[9] GE–23 bears Bultron's signature and reflects that Bultron took the inventory during the 2006 inspection.

[10] Liquid methadone is also referred to as LAAM. Tr. 30, 79–80.

[11] Methadone is a Schedule II controlled substance. 21 C.F.R. § 1308.12(c)(15).

dispensed some buprenorphine.[12] Tr. 117.

3. The HMC's dosing hours were from 5:30 a.m. to 9:30 a.m., and the clinic closed at 10:00 a.m. Tr. 151, 763–64; *cf.* Tr. 87. The clinic, however, remained open for counseling and by appointment until 4:00 p.m. Tr. 763–64.

4. The HMC has consistently followed the same general recordkeeping procedures since the 1990s. Tr. 845–46. The dispensing nurse inventoried the controlled substances the HMC had on hand each morning. Tr. 626, 844–45. The nurse then filled out the Respondent's dispensing log during the day and, at the end of the dispensing hours, the nurse tallied the log. Tr. 627–28, 843. The nurse also inventoried the controlled substances in the HMC's controlled substances safe. Tr. 640, 843. The physical count of the controlled substances had to match the calculated inventory count. Tr. 173, 444–45, 843–45. The daily dosing records were kept in spiral binders. Tr. 841.

5. The HMC stored its methadone diskettes and liquid methadone in a safe with a combination lock. Tr. 175. This safe was in a room that required a key for entry. Tr. 175–76. An alarm system was connected to the safe. Tr. 175, 177.

II. Background on DEA Inspections

6. A DEA group supervisor schedules inspections and audits of registrants. Tr. 190. Scheduled inspections are unannounced because the DEA expects registrants to always comply with the Controlled Substances Act and its implementing regulations, and the registrant's records are always supposed to be readily retrievable. Tr. 51, 193. Inspections are conducted during normal working hours. Tr. 51, 193.

7. DEA inspections of narcotic treatment programs generally follow the same basic format as inspections of other registrants. Tr. 191. At the beginning of a routine inspection, DEA investigators ask the registrant's representative to sign a notice of inspection. Tr. 51, 268. A notice of inspection outlines the registrant's rights and discusses the DEA's authority to inspect the registrant, and normally is accompanied by an explanation of what the DEA will do during the inspection. GE–28; Tr. 30.

8. The DEA investigators then conduct interviews to determine how the registrant's business runs and its policies and practices. Tr. 268. The investigators determine who has access to the registrant's controlled substances. Tr. 268.

9. During an inspection, registrants are asked to produce their controlled substance records, such as their biennial inventory, purchase records, dispensing records, and loss or theft reports. Tr. 194, 268. Inspections are normally done on-site, but, if the DEA takes a registrant's records off-site, the DEA provides the registrant with a receipt for the records taken. Tr. 241.

10. The inspection starts with DEA investigators obtaining the registrant's biennial audit or any physical inventory taken during the audit period; this audit or inventory is used by the DEA as a beginning inventory. Tr. 195. The DEA will then add the registrant's purchases to the inventory. Tr. 195. The total of these figures is the amount of controlled substances for which the registrant is accountable. Tr. 195.

11. The DEA then conducts a closing inventory on the day of the inspection. Tr. 195, 268. Distributions, losses, or thefts are added to the closing inventory count. Tr. 195. This combined total is the amount of controlled substances for which the registrant can account. Tr. 195.

12. If there is a difference between the controlled substances that a registrant is accountable for and the controlled substances that a registrant can account for, the DEA reviews its audit and calculations to verify that the audit was done correctly. Tr. 195–96. When a team of DEA investigators conducts an audit, all of the investigators count and check their counts against each other. Tr. 80–81, 196. If, upon further review, a difference (or ''variance'') still exists, the registrant is given an opportunity to explain the difference. Tr. 196.

13. It is more difficult to obtain an accurate measurement of liquid methadone than methadone tablets. Tr. 63. Liquid methadone bottles may also be overfilled by their manufacturers. Tr. 221, 223, 256–57.[13] A small statistical variance is expected in measurements of liquid methadone. Tr. 63, 220–21.

14. During an inspection, the DEA also evaluates the registrant's security system. Tr. 194, 268–69. To do so, a member of the DEA's inspection team will speak on the phone with the registrant's security company while the registrant's security system is intentionally breached to ensure that the security company receives signals triggered by the breach. Tr. 194.

15. At the end of an inspection, investigators normally conduct a closing discussion with the registrant to address the results of the inspection. Tr. 269; *see* Tr. 670–71 (acknowledging that after three of the DEA inspections involved in this case, the DEA discussed the results of the inspection with Mrs. Ozumba).

III. The 1997 Inspection

16. The DEA inspected the HMC on April 17, 1997. GE–33;[14] *see* Tr. 401–02. Mrs. Ozumba signed the Notice of Inspection at that time. GE–33; Tr. 398–401.

17. Government's Exhibit 34 is a copy of the closing inventory from the 1997 inspection. Government's Exhibit 35 is a copy of the computation chart used during the inspection.

18. DEA investigators found that the HMC had a shortage of 16,144 mg of methadone tablets (a 1% difference) and a shortage of 411 mg/mL of liquid methadone (a 7% difference). GE–35; *see* GE–34 (showing that the Respondent had 249,975 mg of methadone tablets and 100 mg of liquid methadone on hand at the time of the inspection).

19. On May 1, 1997, the DEA sent a letter of admonition to Mrs. Ozumba. GE–36; Tr. 404–05. The letter stated that the HMC failed ''to maintain complete and accurate records of controlled substances . . . . Result[ing] in a variance of −16,144 (−1%) Methadone and −411 (−7%) LAAM.'' GE–36. The letter directed Mrs. Ozumba to advise the DEA about what ''specific steps [she] will take to correct the violations.'' GE–36.

20. On May 21, 1997, Mrs. Ozumba wrote a letter to the DEA to identify corrective measures she implemented to rectify the problems identified in the 1997 inspection. GE–37; Tr. 407–09, 675–78.

21. Mrs. Ozumba accepts responsibility for the variances discovered in the 1997 inspection. Tr. 685, 687, 693, 929.

IV. The 1999 Inspection

22. On December 6, 1999, at around 10:00 a.m., the DEA inspected the HMC. *See* GE–28, 29; Tr. 48. At the beginning of the 1999 inspection, Emmanuel Uchem (''Mr. Uchem''), the HMC's facility manager, signed a Notice of Inspection.[15] Tr. 32, 47, 52, 72; *see* GE–28; *see also* GE–32, at 1 (identifying Mr. Uchem as the Respondent's facility manager). Generally, a facility manager

[12] Buprenorphine is also known as Suboxone and is an agonist-antagonist medication used in opioid treatment. Tr. 117. Substances containing buprenorphine are classified in Schedule III. 21 C.F.R. § 1308.13(e)(2)(i).

[13] Liquid methadone bottles are not translucent. RE–Q.

[14] In this case, exhibits more than 10 years old were obtained from archival storage. Tr. 398–401, 405.

[15] The Unit Chief's testimony that Dr. Ozumba signed the Notice of Inspection undermines her credibility. Tr. 30.

has access to all documents needed to conduct a DEA audit. Tr. 53–54.

23. After Mr. Uchem signed the Notice of Inspection, the DEA inventoried the HMC's liquid methadone and methadone diskettes. Tr. 30. Government's Exhibit 29 is a copy of the closing inventory. Tr. 33. Government's Exhibit 30 is a copy of the computation chart used by the investigators during the inspection. Tr. 36–37.

24. DEA investigators found that the Respondent had an overage of 100,810 [16] mg of methadone diskettes, and a shortage of 2,591 mg of liquid methadone. GE–30; Tr. 37, 40.[17] The Unit Chief recalled that the Respondent had an overage of one product and a deficit of the other, but she could not recall which was which. Tr. 30–31.

25. Throughout the 1999 inspection, the employees of the HMC were cooperative with the DEA investigators. Tr. 54.

26. It is unclear whether the DEA investigators conducted a closing interview following the 1999 inspection. *Compare* Tr. 39 (stating that the Unit Chief helped conduct a closing interview, wherein the DEA discussed variances with the Respondent), *and* Tr. 74 (stating that there was a closing interview after the inspection), *with* Tr. 78 (stating that the Unit Chief was unsure whether the DEA conducted a closing interview after the inspection).

27. On December 15, 1999, the DEA issued a Notice of Hearing to the HMC, which informed the HMC that it would be the subject of a hearing concerning its failure to ''maintain accurate records resulting in the following discrepancies: Methadone Diskets 40 mg +100,810 mg[,] + 3.77%[;] LAAM 10 mg/ml −2,591mg[,] −3.01%.'' GE–31; *see* Tr. 398–401, 411–13.

28. On March 6, 2000, Mrs. Ozumba signed a Memorandum of Understanding (''MOU'') on the HMC's behalf. GE–32; Tr. 65. The MOU cited the HMC for its failure to maintain a complete and accurate record of Schedule II controlled substances received and distributed. GE–32, at 1. The MOU did not mention any variances found during the December 1999 inspection. Tr. 68, 875; *see* GE–32. In the MOU, the HMC agreed to ''maintain a complete and accurate record of all Schedule II controlled substances received and distributed as required by 21 U.S.C. § 827(a)(3) and 21 C.F.R. § 1304.21(a).'' GE–32, at 2.

29. Mrs. Ozumba's acceptance of responsibility for the variances discovered in 1999 is unclear. Mrs. Ozumba believed that every variance discovered after the 1997 inspection had been resolved. Tr. 694. While Mrs. Ozumba accepted responsibility for the variance found in 1999, she also denied responsibility for it. *See* Tr. 685, 689. Mrs. Ozumba specifically denied having a variance of 100,810 diskettes in 1999, stating she has never had a variance that large. Tr. 696–97; *see* GE–30. Mrs. Ozumba also testified that she believed the 1999 variances had been resolved by the MOU. Tr. 697–98.

V. The 2006 Inspection

30. Prior to the 2006 inspection, at the start of every day, Bultron inventoried the controlled substances at the HMC. Tr. 626. At the end of each day, she tallied up what she had dispensed, subtracted that from her starting inventory, and conducted a closing inventory. Tr. 627–28. Around the time of the inspection, the HMC kept ongoing,[18] systematic daily dispensing records. GE–27; Tr. 878. At the time of the 2006 inspection, all of the HMC's records were paper files. Tr. 623.

31. On September 8, 2006, the DEA conducted a scheduled inspection of the HMC. Tr. 192, 198. Mrs. Ozumba signed a Notice of Inspection at 9:55 a.m. that day. GE–22; Tr. 200–01. The employees of the HMC cooperated with the DEA investigators during this inspection. Tr. 630–31. Likewise, the DEA investigators acted professionally. Tr. 634.

32. During this inspection, the HMC had an adequate [19] biennial inventory. Tr. 255.

33. The HMC only provided DEA investigators with one 222 Form, which was dated June 13, 2006. Tr. 202–03; *see* GE–25.

34. The DEA inventoried the HMC's liquid methadone and methadone diskettes. GE–23; Tr. 205, 219–20. Government's Exhibit 23 is a copy of the closing inventory. Tr. 205. Government's Exhibit 24 is a copy of the computation chart used during the inspection. Tr. 207.[20]

35. DEA investigators found that the HMC had a shortage of 40 mg of methadone diskettes [21] (a .01% difference) and an overage of 2,954 mg of liquid methadone (a 1.9% difference). GE–24; *see* Tr. 207–09.[22]

36. The methadone diskettes variance did not raise concerns that the HMC was diverting methadone tablets. Tr. 225. However, the liquid methadone variance could not be accounted for by overfilling, and was not a small or expected variance. Tr. 220–21, 230.

37. Following the inspection, the DEA conducted a closing interview with Mrs. Ozumba and gave her an opportunity to explain both variances. Tr. 250, 881. Initially, the variance for methadone diskettes was greater than just 40 mg. Tr. 251. Mrs. Ozumba produced an explanation, which the DEA accepted and applied to reduce the variance to only 40 mg. Tr. 251. However, Mrs. Ozumba did not provide any explanation for the overage of liquid methadone. Tr. 251.

38. On September 26, 2006, the DEA sent Mrs. Ozumba a letter of admonition regarding the 2006 inspection. Tr. 212–14; GE–26. The letter of admonition alleged that the HMC's ''[d]ispensing records were not maintained in a complete and accurate manner'' [23] as required by federal regulations. GE–26; Tr. 233.

39. In response to the letter of admonition, Mrs. Ozumba sent a letter to the DEA. GE–27; Tr. 238–39. Mrs. Ozumba's letter acknowledged a ''gap in monthly perpetual summary records'' due to her brief absence from the HMC. GE–27. Mrs. Ozumba indicated that she had conducted training, some of which surpassed federal requirements, such as

[16] The Unit Chief testified that the quantity of methadone diskettes on GE–29 should have been 641,740, rather than 641,750, which would have resulted in an overage of 100,800 mg of methadone. GE–29–30; Tr. 55–59. Upon closer examination of the exhibit, however, the 641,750 figure is correct. The error occurred in the ''Containers X Contents'' column concerning the methadone diskettes, where the investigators added 340 to 1410, and entered 1740 as the sum. Simple addition reveals the correct total to be 1750. Thus, the totals in the ''Containers X Contents'' column of GE–29 would be 624,000 + 16,000 + 1750, which equals 641,750.

[17] Column 5 of GE–30 represents the controlled substances the HMC had on hand when the DEA conducted the inspection. Tr. 37, 40. This number is taken from the column on GE–29 labelled ''Quantity.'' GE–29. The ''Quantity'' column of GE–29 was determined by multiplying the number of controlled substances the Respondent had on hand by the strength of the controlled substances. Tr. 55. Column 6 of GE–30 was calculated using the Respondent's controlled substance purchases and dispensing logs. Tr. 40. Column 8 is the variance amount, which represents the difference between Column 4 and Column 7. GE–30; Tr. 82.

[18] There was a gap in the monthly perpetual records due to Mrs. Ozumba's absence for a family vacation. Tr. 878–80; *see* GE–27. Nonetheless, at that time, the HMC's nurses still conducted opening inventories, maintained daily dispensing records, and conducted closing inventories each day. Tr. 878.

[19] If a registrant counts its controlled substances every day and records that count in a manner that satisfies the Code of Federal Regulations' biennial inventory requirements, that daily inventory is considered to be an adequate biennial inventory. Tr. 246.

[20] The purchases reflected on GE–25 are recorded under the ''purchases/receipts'' column of GE–24. Tr. 207–08.

[21] This equals just one methadone tablet. Tr. 251.

[22] *But see* Tr. 629 (Bultron testifying that, during the 2006 inspection, a DEA investigator told her that the HMC's inventory balanced out, but Bultron could not recall whether the investigator was a man or a woman).

[23] *Contra* Tr. 881–82.

perpetual inventories.[24] GE–27; Tr. 239–40. Bultron, however, did not recall the HMC implementing any new policies, procedures, or trainings after the 2006 inspection. Tr. 638.

40. Mrs. Ozumba's acceptance of responsibility for the variance discovered in 2006 is unclear. Mrs. Ozumba acknowledged the 2006 variance, but believed that it had been resolved. Tr. 930–31. Mrs. Ozumba believed that the issues identified during the 2006 inspection were resolved by her letter, wherein she explained that the ''gap in monthly perpetual summary records was accounted or caused by the Director's brief absence due to a family vacation.'' GE–27; Tr. 690–92; *see* Tr. 694 (asserting that all issues after the 1997 inspection had been resolved). Mrs. Ozumba believed that she provided to DEA a satisfactory explanation resolving the variance within 30 days of the DEA inspection. Tr. 699–702.

41. During the 2006 inspection, the HMC provided the DEA with all the forms or documents it requested, and the HMC was not cited for any errors related to its 222 Forms or biennial inventory. Tr. 630, 881–82.

VI. The 2011 Inspection [25]

A. Recordkeeping Procedures Before the 2011 Inspection

42. Throughout Franks' employment at the HMC, including prior to the 2011 inspection, Franks counted the medicine and balanced the HMC's controlled substance inventory at the end of each day. Tr. 152. There were occasions when the morning inventory count did not match the previous day's closing inventory count. Tr. 153. When this happened, Franks would alert Mrs. Ozumba. Tr. 153. Likewise, at the end of each day, Franks verified that her records matched the physical count of remaining medication at the HMC. Tr. 163–64. Franks recorded the amount of medication she dispensed each day in a file maintained on a computer, printed out the information, and put the printout in a binder. Tr. 164–66. These records were stored in the medication room. Tr. 171. Franks followed these recordkeeping procedures throughout the entire time she worked at the HMC. Tr. 171. Mrs. Ozumba emphasized the importance of keeping accurate records. Tr. 173.

43. While working for the HMC, there were times when Franks ordered controlled substances for the Respondent's clinic. Tr. 154. On those occasions, Franks would sign her name on 222 Forms at Mrs. Ozumba's direction. Tr. 153–54. Respondent's Exhibit BB contains copies of 222 Forms that Franks signed between October 2011 and May 2012. RE–BB, at 1–6, 8; Tr. 155–57.

44. On October 1, 2011, and on numerous days until December 31, 2011, Franks prepared methadone daily dispensing records for the HMC. Tr. 163–70; *see* RE–G–H.[26]

B. The Inspection

45. In October 2011, the DEA conducted a scheduled inspection of the HMC, with an audit period of one year. Tr. 291–92.

46. Before beginning the inspection, the Case Agent checked the Registrant's Information Consolidated System (''RICS'') to see who had signed the Respondent's DEA application. Tr. 277–78. RICS documented that, at one point, Dr. Ozumba signed the application and, at other times, Mrs. Ozumba had signed it. Tr. 279.

47. Mrs. Ozumba signed a Notice of Inspection at 9:57 a.m. on October 11, 2011. GE–3; Tr. 272–73, 276. When the DEA investigators arrived to inspect the HMC, Mrs. Ozumba asked them to come back, stating she did not have the keys to the dosing room. Tr. 280.[27] Mrs. Ozumba indicated that she could not get the keys to the dosing room that day. Tr. 280. The investigators insisted on starting the inspection and conducted the interview portion of the inspection that day. Tr. 281, 290. The investigators also confirmed the HMC's dosing hours and informed Mrs. Ozumba that they would return in a day or two. Tr. 282.

48. On October 13, 2011, the investigators returned to the HMC during a time when Mrs. Ozumba had indicated the clinic would be open. Tr. 282. Upon arrival, the investigators found the Respondent's doors locked. Tr. 282. The investigators, however, talked with Franks, who was outside of the HMC. Tr. 149, 282–83, 731. Franks told the investigators that she had finished dispensing for the day and had to go take a test. Tr. 149, 282–83. The DEA investigators were professional and told Franks that they had an appointment with Mrs. Ozumba. Tr. 149–50, 158, 162. Franks advised the investigators that Mrs. Ozumba was not in the building, but Franks contacted Mrs. Ozumba by phone and let the DEA agents speak with her. Tr. 150, 283, 731. During that phone call, Mrs. Ozumba stated that she was unable to come to the clinic and could not get someone else to come to the clinic to complete the inspection that day.[28] Tr. 283–84, 731. The DEA investigators returned to their office without conducting the inspection. Tr. 284. Shortly thereafter, Mrs. Ozumba called the DEA office and made arrangements to meet at the HMC later in the afternoon on that same day. Tr. 151, 284.

49. On the afternoon of October 13, 2011, DEA investigators, including the Houston Office's diversion program manager (''DPM''), went to the HMC. Tr. 151, 285. When they arrived, Mrs. Ozumba still did not have the keys to the dosing room, but Dr. Ozumba arrived soon thereafter with the keys. Tr. 285. The interaction between the DEA investigators and Mrs. Ozumba became tense and hostile, and the DPM announced that the investigators were leaving. Tr. 285–86, 719–26, 734–35.[29] Dr. Ozumba, Mrs. Ozumba, and Clemente Brown, a counselor, pursued the investigators outside of the clinic and persuaded the investigators to return to complete the investigation. Tr. 286–88, 1013; *cf.* Tr. 883.

50. When Franks observed the interactions between the Ozumbas and

[24] At the hearing, Mrs. Ozumba testified that she created a new form, RE–X, to control the Respondent's inventory of controlled substances in response to the 2006 inspection. Tr. 931–35. However, in GE–27, Mrs. Ozumba mentioned no such form. Moreover, Garnett credibly testified that he created RE–X in 2012. Tr. 977. Therefore, I do not find Mrs. Ozumba's testimony on this point to be credible.

[25] I do not credit Dr. Ozumba's testimony about the 2011 inspection as fully reliable, Tr. 1009–26, because it contains several contradictions and inconsistencies. *E.g., compare* Tr. 1009–10 (stating that Mrs. Ozumba was not present for the inspection), *with* Tr. 1012, 1014–15 (stating that Mrs. Ozumba was present for the inspection); *compare* Tr. 1012 (stating that the HMC produced records to the DEA investigators before following the investigators to the parking lot), *with* Tr. 1014 (stating that the HMC produced records to the DEA investigators after following the investigators to the parking lot). Insofar as Dr. Ozumba's testimony about the 2011 inspection aligns with other witnesses' testimony about the 2014 inspection, I have considered it under the 2014 inspection findings, *infra.* Insofar as Dr. Ozumba's testimony contradicts other witnesses' testimony about either the 2011 or 2014 inspections, I do not merit his testimony as credible in this Recommended Decision.

[26] Respondent's Exhibit G contains methadone diskette dispensing records from October 1, 2011, through December 30, 2011. Respondent's Exhibit H contains liquid methadone dispensing records from October 14, 2011, through December 31, 2011. They were offered in evidence to show the type of records the HMC was maintaining around the time of the 2011 inspection. Tr. 854–56.

[27] Mrs. Ozumba testified, however, that she could have done the inspection but did not want to because the nurse had already left and because she had a doctor's appointment. Tr. 729

[28] In 2011, Mrs. Ozumba suffered from arthritis and chronic pain, as well as some mobility issues. Tr. 882, 1009.

[29] The Case Agent testified that the DPM decided to leave because Mrs. Ozumba would not calm down. Tr. 285–86. I do not credit that testimony. I find it more likely that the investigators left because the interactions between the parties remained tense and hostile.

DEA personnel during the inspection, the interactions were civil and very professional. Tr. 162. However, at times throughout this inspection, the interactions between Mrs. Ozumba and the Case Agent were fairly contentious. Tr. 463, 1015–16.

C. Physical Security

51. The investigators checked the security system at the HMC and determined that it was not working properly. Tr. 288. The security company did not receive signals from various security zones in the clinic. Tr. 289, 533. Additionally, the HMC's dosing room did not have a panic button.[30] Tr. 289, 533.

D. 222 Forms

52. The HMC did not produce any methadone 222 Forms from the audit period as requested by the DEA. Tr. 313.[31] The DEA, however, contacted a methadone supplier, BIRI Roxane, which produced supplier's copies of five methadone 222 Forms on which the HMC had placed orders for methadone. Tr. 306–14; *see* GE–6, at 1–5.

E. Biennial Inventory and Dispensing Logs

53. The HMC did not produce a biennial inventory when requested to do so by the DEA. Tr. 477.[32]

54. The HMC produced its dispensing logs upon the DEA's request. Tr. 477, 751, 886. Respondent's Exhibit G contains the daily dispensing logs for methadone diskettes from October 1, 2011, to December 30, 2011. Tr. 852–53. Likewise, RE–H contains the daily dispensing logs for liquid methadone from October 14, 2011, to December 31, 2011. Tr. 854–55. Most of these records are from outside of the 2011 inspection's audit period, and these records do not show the actual pharmaceutical name or strength[33] of the drugs represented therein. Tr. 854, 920–24.

F. Conclusion and Aftermath of the Inspection

55. The DEA investigators conducted a closing inventory of methadone at the HMC. GE–4, at 1–2; Tr. 300–02, 748–49. The DEA did not perform a full audit of the HMC's controlled substance inventory because the HMC did not produce the records that the DEA needed in order to conduct an audit. Tr. 477.[34]

56. Although Mrs. Ozumba produced records during the inspection, many of the records she produced were from outside of the audit period. Tr. 289–90.

57. After two hours, the investigators terminated the inspection. Tr. 290.[35] The investigators conducted a closing interview with Dr. and Mrs. Ozumba and told them: (1) which documents they had not provided to the investigators; and (2) what physical security issues the DEA had discovered.[36] Tr. 290–91.

58. After the inspection, the DEA noted that the HMC committed the following violations: failure to maintain a biennial inventory; failure to maintain complete and accurate records; failure to preserve 222 Forms; failure to produce adequate power of attorney documents; and failure to maintain adequate physical security of its controlled substance inventory. Tr. 318–19.

59. The DEA gave the HMC a short time period to correct its physical security issues. Tr. 290. Within a week, the HMC corrected those issues. Tr. 291, 533, 739–40, 901.

60. Based upon the results of the inspection, DEA pursued a civil fine from the Respondent. Tr. 291. The United States Attorney's Office handled the case against the Respondent, which dealt solely with alleged recordkeeping violations. Tr. 1055.

61. The HMC eventually negotiated a settlement with the United States Attorney's Office. Tr. 1056–57. Mrs. Ozumba signed a ''Stipulated Agreement'' on March 26, 2013, to settle the violations found in 2011, but she is not sure[37] if she reviewed it before she signed it. GE–7; Tr. 708–10. Although Mrs. Ozumba believed that she had done nothing wrong, she signed the Stipulated Agreement because she did not have ''a lot of options.'' Tr. 745.

62. Paragraph 16 of the Stipulated Agreement states that it ''does not release Houston Maintenance Clinic from DEA administrative liability under statute, contract or regulation.'' GE–7, at 6.

63. Paragraph 23 of the Stipulated Agreement states, ''The Parties agree that this Agreement does not constitute evidence or an admission by any person or entity, and shall not be construed as an admission by any person or entity, with respect to any issue of law or fact.'' GE–7, at 7.

64. Mrs. Ozumba specifically declined to accept responsibility for any recordkeeping issues discovered in the 2011 inspection. Tr. 933. Mrs. Ozumba believed that any issues concerning the 2011 inspection had been resolved. Tr. 694.

G. Recordkeeping Changes After the 2011 Inspection

65. In May 2012, the HMC kept daily dispensing logs, but did not use the daily inventory form, which Garnett had created for the HMC, RE–X. Tr. 963, 1004. Instead, clinic nurses recorded the daily inventory on the daily dispensing logs. RE–A; Tr. 963, 1000–01. The HMC maintained its perpetual inventory in a Microsoft Word document and in paper files. Tr. 954, 956.

66. In 2012, Garnett designed an Excel spreadsheet for the HMC for use as a perpetual inventory. Tr. 952–59. The Excel spreadsheet contained functions for automatic addition and subtraction. Tr. 956. The first entry under the beginning balance for controlled substances on the spreadsheet was taken from the closing inventory at the last DEA inspection. Tr. 957. In 2012, Garnett created the spreadsheet format for pages one and two of RE–C. Tr. 960, 982. These pages do not indicate an ending balance for any particular day except the last day of the month. Tr. 989, 1001–02. Further, these pages do not document any physical inventory of the HMC's controlled substances. Tr. 989.

67. Prior to October 2013, Garnett formatted the HMC's daily dosing sheet. Tr. 977; RE–A. Garnett automated the HMC's daily dosing sheet; after entries are typed into the sheet, data is

[30] Nothing in 21 C.F.R. § 1301.74(l) requires a narcotic treatment program to have a panic button in its dosing room. Tr. 601. However, the DEA can, within its discretion, require that a panic button be installed. Tr. 601; *see* 21 C.F.R. § 1301.74(l). The Case Agent did not know whether, prior to October 2011, anyone had told the HMC that it was required to have a panic button in its dispensing room. Tr. 602.

[31] *Contra* Tr. 751, 886–87, 890.

[32] *Contra* Tr. 751, 890. Mrs. Ozumba testified that the HMC maintained a biennial inventory. Tr. 888.

[33] The HMC, however, only ordered one strength of methadone diskettes (40 mg) and one strength of liquid methadone (1 mg/mL). Tr. 924–25.

[34] *Contra* Tr. 722–23, 887, 890, 1012 (Both Dr. and Mrs. Ozumba testified that they produced the records requested by the DEA investigators, but that the investigators refused to look at them).

[35] *Compare* Tr. 734 (stating that the DEA investigators left because Mrs. Ozumba refused to surrender her DEA registration), *with* Tr. 1026 (noting that Dr. Ozumba did not hear the investigators ask Mrs. Ozumba to surrender the Respondent's registration). Additionally, Mrs. Ozumba testified that the investigators took the HMC's documents with them when they left the clinic. Tr. 736–38, 754. I do not find this testimony to be credible, particularly because Mrs. Ozumba later testified that she was unsure whether the DEA took any documents from the clinic. Tr. 755.

[36] I do not credit Mrs. Ozumba's testimony that DEA did not conduct a closing interview concerning the 2011 inspection because the security system at the HMC was brought up to standards about a week after the inspection. Tr. 290–91; *see also* Tr. 901.

[37] Mrs. Ozumba testified that no one discussed the agreement with her before she signed it. Tr. 710. When challenged on that statement, however, she admitted that her attorney explained the contents of the agreement to her. Tr. 710–11.

automatically generated. Tr. 977, 1004. Anything handwritten on the daily dosing sheet is entered into the electronic dosing sheet by a nurse. Tr. 978.

VII. The 2014 Inspection

68. Prior to the 2014 inspection, McSwain and other nurses employed by the HMC helped prepare daily dispensing records at the clinic. RE–A, at 85–318; RE–B, at 91–338; Tr. 103–04. These dispensing records were kept in an Excel spreadsheet. Tr. 99–100.[38]

69. McSwain and other employees generated a perpetual inventory on a monthly basis for the HMC, using the daily dosing records. Tr. 114. The perpetual inventory was generated by totaling all of that month's daily records. Tr. 114. When the HMC received orders of controlled substances, McSwain increased the inventory on the Excel spreadsheet accordingly. Tr. 115. On any given day, the incoming nurse could look at the perpetual inventory and know the prior day's ending inventory. Tr. 129.[39]

70. While McSwain worked at the HMC in 2014, its daily dispensing logs always balanced with its monthly records. Tr. 115.

A. Beginning of the Inspection

71. The DEA inspected the HMC on October 14, 2014 with an audit period of October 1, 2013, through October 14, 2014. GE–9, at 1; Tr. 603.

72. On October 14, 2014, DEA investigators came to the HMC before 9:15 a.m., to conduct an inspection. Tr. 87, 324; *see* GE–11. The HMC was still dosing when the DEA arrived. Tr. 87–88, 324.[40] The investigators met with McSwain, who was the dispensing nurse at that time, and explained that they were there to conduct an inspection. Tr. 324.

73. Mrs. Ozumba was not at the clinic at the time of the inspection because she was recovering from knee surgery and was in a great deal of pain. RE–Z; Tr. 88, 123, 324, 890, 893, 1017, 1035, 1039. When Mrs. Ozumba was contacted by phone, she requested that the DEA investigators come back to conduct the inspection in a couple of weeks. Tr. 324.

74. Throughout the October 2014 inspection, the DEA investigators were professional and were not rude. Tr. 87–89, 100.[41] Likewise, Dr. Ozumba and the Respondent's employees were professional and cooperative throughout the inspection. Tr. 1046.

75. After dosing was concluded, but before Dr. Ozumba arrived at the HMC, the DEA investigators inventoried the controlled substances at the clinic at 9:15 a.m.[42] GE–11; Tr. 88, 343–45, 1017–18, 1020.

76. Dr. Ozumba came to the HMC between noon and 1:00 p.m. Tr. 88, 324–25, 765–66, 1009, 1017, 1019, 1040. Upon his arrival, Dr. Ozumba signed a Notice of Inspection. GE–8; Tr. 321–25, 1018–19.

77. The DEA gave Dr. Ozumba a list of the documents that the DEA needed to review. Tr. 325. Dr. Ozumba had access to Mrs. Ozumba's office, and had keys to all of the doors in the HMC and Mrs. Ozumba's office. Tr. 90, 732–33. Dr. Ozumba was familiar with where the HMC's records were stored, but he did not know where all of the records were kept, including the 222 Forms. Tr. 1023.

78. McSwain, Dr. Ozumba,[43] and the DEA investigators all spoke to Mrs. Ozumba on the phone. Tr. 89, 91, 100, 325, 373, 431, 536, 716–17, 766–67, 784, 1039, 1041, 1052.[44] McSwain did not hear any of the conversations between the DEA investigators and the Ozumbas. Tr. 110–11, 124, 140–41. Mrs. Ozumba made suggestions about where to look for the documents that the DEA had requested. Tr. 91, 124–25, 716–17, 767–68, 784, 1041.[45] However, Mrs. Ozumba testified that all of the required documentation, including daily dispensing logs, inventories, and 222 Forms, was at the HMC at that time. Tr. 894–95.

79. Dr. Ozumba testified that he does not believe that the 2014 inspection would have gone better if Mrs. Ozumba had been present for the inspection. Tr. 1024. He also testified, however, that Mrs. Ozumba knew where the 222 Forms[46] and buprenorphine logs were located. Tr. 1025; *see also* Tr. 91 (McSwain testifying that when Mrs. Ozumba was on the phone, she was only suggesting places to look for documents.)

B. Biennial Inventory

80. The Case Agent requested the biennial inventory for the HMC's controlled substances. Tr. 92, 1043. A biennial inventory reflects a physical count of controlled substances on hand on a specific day. Tr. 371. The HMC did not provide a biennial inventory. Tr. 329, 521.[47] During the inspection, however, Mrs. Ozumba was talking with McSwain by phone, instructing her how to create a biennial inventory. Tr. 92–93. The HMC provided the DEA with annual inventories for its methadone diskettes and liquid methadone, as well as its 2 mg and 8 mg buprenorphine. GE–10, at 1–4; Tr. 368–70, 584.

C. Buprenorphine Inventory

81. The Case Agent looked for the HMC's buprenorphine (suboxone) inventory. Tr. 94, 325–26. McSwain was not aware of that inventory; though, she did know that the daily dosing records of the patients who received buprenorphine were kept in a manila envelope. Tr. 93–95, 132. The HMC only had about three patients who received buprenorphine. Tr. 94, 117. After requesting the buprenorphine inventory, the Case Agent entered the dosing room and found McSwain working on a computer, creating a buprenorphine inventory at Mrs. Ozumba's direction. Tr. 92–94, 326. The Case Agent told McSwain to stop what she was doing and print off what she had without further modifications. Tr. 326. During the inspection, the HMC did not produce an initial inventory for buprenorphine. Tr. 456.

[38] For example, on page 91 of RE–B, the daily dosing total of 3,500 units of liquid methadone was entered into the Excel spreadsheet. Tr. 126–29, 138.

[39] Garnett testified, however, that using RE–C, at 1, you could not tell what the inventory was on any certain day, except for the last day of the month. Tr. 989, 1001–02.

[40] The DI testified that the DEA investigators arrived after dispensing was completed. Tr. 1047. In light of conflicting testimony and GE–11, showing that the closing inventory was taken at 9:15 a.m., I do not credit the DI's testimony on this issue.

[41] *Contra* Tr. 1022 (Dr. Ozumba testified that the DEA investigator was oppressive, verbally combative, and degrading, but he could not detail the investigator's statements). I do not credit Dr. Ozumba's testimony on this issue.

[42] *Contra* Tr. 1040, 1044 (stating that the investigators did not conduct any part of the investigation, including the inventory, before Dr. Ozumba arrived).

[43] *Contra* Tr. 1032 (stating that Dr. Ozumba did not talk to his wife during the inspection).

[44] It is unclear whether Mrs. Ozumba was under the influence of post-surgery medication at this time. *Compare* Tr. 124 (stating that Mrs. Ozumba did not seem to be under the influence of medication and seemed to be her normal, spirited self), *with* Tr. 928–29 (stating that Mrs. Ozumba was taking tramadol, hydrocodone, prednisone, protonix, a muscle relaxer, and anxiety medication at that time), *and* Tr. 716, 772 (stating that she was not cognizant and was only pretending to be normal). Mrs. Ozumba was cognizant enough, however, to ask for the inspection to be conducted at a later date. Tr. 324.

[45] McSwain testified that Mrs. Ozumba did not suggest they look on the computer for documents. Tr. 133. Mrs. Ozumba's testimony on this point was contradictory; she first said that she did not tell McSwain to look on her computer, but then said that she told McSwain to look on her computer. Tr. 769–72. Further, the Case Agent found McSwain creating a document on the computer at Mrs. Ozumba's direction. Tr. 92–94, 326.

[46] Tr. 898–99, 901–02. Mrs. Ozumba testified that the 222 Forms provided at the hearing in RE–BB were maintained in the clinic in a locked cabinet. Tr. 898.

[47] Mrs. Ozumba testified that there was a biennial inventory on a ''backup'' drive, but McSwain did not know about it. Tr. 770.

D. 222 Forms

82. The DEA requested 222 Forms from the HMC. Tr. 89, 132–33, 1043. The HMC provided some 222 Forms to the DEA. GE–13, at 1–4; Tr. 353–54. However, one 222 Form, dated September 9, 2014, was incomplete because it does not show the number of packages received or the date of receipt. GE–13, at 1; Tr. 354–55. Another 222 Form was signed by Dr. Ozumba, not Mrs. Ozumba. GE–13, at 2; Tr. 355. The Respondent provided additional 222 Forms to DEA after the date of the inspection, but the DEA did not include the information contained on those forms in its audit of the HMC because they were received after the audit had been completed. Tr. 354, 366–67.

83. The HMC provided the DEA with a list of controlled substances that it purchased between January 15, 2014 and September 12, 2014. GE–12; Tr. 347–49. The DEA obtained a similar list from BIRI-Roxane, the Respondent's supplier. GE–15; Tr. 351, 359–63.

84. The documents in RE–E are requisition forms for controlled substances, which are not forms that the DEA required the HMC to maintain. Tr. 459–61. In addition, they were not produced until this case was being prepared for the DEA administrative hearing. Tr. 460, 538.[48]

E. Dispensing Records

85. The DEA requested the HMC's dosing records. Tr. 135, 1043. The HMC provided the DEA with dispensing logs for methadone diskettes and liquid methadone. Tr. 105, 107, 422, 456–57, 607, 1043–44; *see* RE–A–B. Respondent's Exhibit A contains the daily dosing logs for methadone diskettes from October 1, 2013, through October 14, 2014. RE–A; *see* Tr. 847–48, 915. Respondent's Exhibit B contains the daily dosing logs for liquid methadone from September 30, 2013, to October 31, 2014. RE–B; Tr. 849–50.

86. During the October 2014 inspection, no dispensing logs were provided for buprenorphine, and McSwain told the Case Agent that the HMC did not have dispensing logs for buprenorphine. Tr. 378, 422, 455. While RE–AA contains dispensing logs for buprenorphine, those logs were not provided during the inspection and were not produced by the Respondent until preparing for the DEA administrative hearing. Tr. 461–62, 538.

[48] While it is possible to compare RE–E with GE–15 to calculate the quantity of controlled substances the Respondent received from BIRI-Roxane, it was the Respondent's responsibility to maintain its copy of 222 Forms, and to have them readily retrievable at the time of the inspection. Tr. 424, 460; *see also* 21 C.F.R. §§ 1304.04(f)(2), 1305.17(a).

F. Variances

87. The investigators conducted a closing inventory as a part of their inspection. GE–11. The investigators used a computation chart to conduct their audit of the HMC's inventory. GE–9, at 1–9; Tr. 375–80. The closing inventory indicated that the HMC had an overage of 1,200,000 dosage units of methadone diskettes and an overage of 500,251 dosage units of liquid methadone. GE–9. The closing inventory also indicated that the HMC had a shortage of 30 buprenorphine 2 mg tablets and 175 buprenorphine 8 mg tablets. GE–9. These overages and shortages were calculated using only the HMC's receipt records; they did not incorporate BIRI-Roxane's (or other supplier's) records, because the audit focused on only the Respondent's records. Tr. 379, 421–24, 496–98.

G. Power of Attorney Forms

88. The DEA requested the HMC's power of attorney forms. Tr. 96, 1043. McSwain knew that a power of attorney form had been prepared, but she could not find it. Tr. 96.

89. Dr. Ozumba provided the Case Agent with two power of attorney forms. Tr. 327–29, 389–92. The first form was a blank form that was prepared for Austin Orette's (''Dr. Orette'') signature. GE–21; Tr. 390. Dr. Orette was not authorized to sign a power of attorney on behalf of the HMC because Dr. Orette was not the HMC's DEA registrant. Tr. 598–99. The Case Agent explained to Dr. Ozumba that Dr. Orette did not have the authority to execute a power of attorney on behalf of the HMC. Tr. 327, 390–93.

90. On the day of the inspection, McSwain signed a new power of attorney form, which was given to the DEA. Tr. 97. Dr. Ozumba gave the Case Agent a power of attorney form, purportedly signed (without any witnesses) on February 8, 2014, with ''C. Ozumba'' written in as the grantor, no name written in as the ''attorney-in-fact,'' and McSwain's name signed as the ''person granting power.'' GE–20; Tr. 328–29, 395–96.

H. Conclusion and Immediate Aftermath of the Inspection

91. The HMC was unable to provide the DEA with all of the documents the DEA had requested on the date of the inspection. Tr. 91, 94, 105, 107, 132, 135–36, 329, 437–39, 455, 461–62, 521, 538, 1023.

92. At the end of the inspection, the investigators took some documents they had requested with them and they left a receipt, which listed everything that the investigators took and the additional documents that the DEA needed. Tr. 96, 1022, 1028–29, 1033. The documents the DEA took included some of the 2014 dispensing logs. Tr. 107–10.

93. A few days after the inspection, but after the DEA's audit was completed, Mrs. Ozumba directed McSwain to retrieve a binder from Mrs. Ozumba's office and fax the documents contained therein to the DEA. Tr. 98, 333. McSwain faxed the records that are contained in GE–14 to the DEA on October 17, 2014. Tr. 333. Some of those documents were the documents that the DEA investigators requested during the inspection, such as a power of attorney form and 222 Forms. Tr. 98–99. However, most of the faxed documents were from outside of the audit period. Tr. 333; *see* GE–14. Only seven of the faxed pages were relevant to the DEA's audit. Tr. 340–42; *see* GE–14, at 3–9.

94. The power of attorney that was faxed to the DEA on October 17, 2014, was a form prepared for Dr. Orette's signature; it was signed, however, by Mrs. Ozumba, who was the person who had authority to sign a power of attorney on behalf of the HMC at that time.[49] GE–14, at 2; Tr. 335, 337–39; *see* Tr. 98–99.

95. Because of Mrs. Ozumba's poor physical condition, the Case Agent attempted to conduct a telephonic closing interview with Mrs. Ozumba. Tr. 330–32. Mrs. Ozumba, however, did not cooperate in the telephonic closing discussion, so the interview was terminated early. Tr. 332.

96. After the attempted closing interview, the DEA notified Mrs. Ozumba that an informal hearing would be conducted on December 10, 2014. GE–17; Tr. 380–82. Mrs. Ozumba was notified that the hearing concerned the HMC's failure to: Maintain complete and accurate records of each controlled substance received, sold, and delivered; conduct a biennial inventory; conduct an initial inventory of buprenorphine; preserve 222 Forms; indicate the date of

[49] Later, the Respondent submitted this same power of attorney form, but it was signed by Dr. Orette. RE–F. A comparison of page two of GE–14 and page one of RE–F reveals that the latter document is an alteration of the former. All of the handwritten entries on both documents are identical. On close examination, it is possible to see remnants of Mrs. Ozumba's signature to the left of and below Dr. Orette's signature. No explanation was provided by the Respondent concerning why the document was altered. The Respondent did not produce RE–F until it was preparing for the hearing in this case. Tr. 538. Nonetheless, RE–F represents that Dr. Orette was ''authorized to sign the current application for registration'' on the Respondent's behalf. RE–F, at 2; *see* Tr. 102, 137. Dr. Orette, however, has never had the authority to sign the Respondent's DEA registration application. *See* Tr. 659.

receipt of 222 Forms; execute a power of attorney authorizing an alternate person to sign 222 Forms; and completely and accurately complete daily dispensing logs. GE–17, at 1–2. In response, Mrs. Ozumba, on behalf of the HMC, sent a letter to the DEA on December 4, 2014. GE–18; Tr. 383–84. Therein, Mrs. Ozumba requested that the hearing be rescheduled to March 11, 2015, to allow her to obtain legal counsel for the HMC, and to accommodate Mrs. Ozumba's continuing post-operative medical issues. GE–18; Tr. 385. The DEA denied the request. GE–19; Tr. 388–89.

97. Mrs. Ozumba does not believe that the HMC committed any violation in 2014. Tr. 934. Mrs. Ozumba believes that any issue found by the DEA has been resolved. Tr. 694. Following this inspection, Mrs. Ozumba moved all of the HMC's 222 Forms to the clinic's dispensing room. Tr. 934. Mrs. Ozumba accepted responsibility for her absence during the inspection, but believed that, if the DEA were to conduct an inspection now, all of the needed records would be readily available. Tr. 934.

I. Records Produced For the DEA Administrative Hearing

98. During the pendency of this case, the HMC provided the DEA with 222 Forms from the 2014 audit period for the first time.[50] RE–BB, at 21–29; Tr. 437–39. One of these 222 Forms was an altered copy of a document previously given to the DEA during the 2014 inspection. Tr. 439; *compare* GE–13, at 1, *with* RE–BB, at 29 (reflecting alterations on the numbers of packages received and the date on which they were received).

99. During the pendency of this case, the HMC also provided requisition forms for buprenorphine. RE–E; Tr. 867, 869. However, the HMC was not required to maintain these forms. Tr. 459–61.[51] Moreover, RE–E was not provided to the DEA until this case was already pending. Tr. 460, 538. While it is possible to compare RE–E with GE–15 to calculate the quantity of controlled substances the HMC received from BIRI-Roxane, it was the Respondent's responsibility to maintain its copies of 222 Forms and to retrieve them within a reasonable time during the inspection. Tr. 424, 460; *see also* 21 C.F.R. 1304.04(f)(2), 1305.17(a).

100. Government's Exhibit 10, provided to the DEA during the 2014 inspection, *see* Tr. 584, and Respondent's Exhibit E, provided to the DEA during this hearing, both purport to report the HMC's inventory in 2014. *Compare* GE–10, *with* RE–E. A comparison of the two exhibits reveals that many of the recorded figures therein do not match, including the buprenorphine 2 mg, Tr. 559–66; *compare* GE–10, at 3, *with* RE–E, at 5, and the buprenorphine 8 mg, Tr. 566–71, *compare* GE–10, at 4, *with* RE–E, at 8. Notably, the two exhibits reflect different: beginning balances of buprenorphine 2 mg tablets in June 2014; amounts dispensed in June, August, September, and October 2014; and ending balances in June through October 2014.[52] *Compare* GE–10, at 3–4, *with* RE–E, at 5, 8.

101. Respondent's Exhibit C was compiled using the HMC's daily dosing reports, but it was not presented to the DEA [53] until this case was already pending before me. Tr. 540, 794–96, 863, 866. Pages one and two of RE–C are monthly summaries of the HMC's methadone diskette daily dosing perpetual inventory. RE–C, at 1–2; Tr. 116, 857. The beginning balance on this form is taken from the last DEA audit. Tr. 857–58. This information was maintained on Mrs. Ozumba's backup computer drive. Tr. 861–62. Pages three and four of RE–C are similar, except they concern liquid methadone. RE–C, at 3–4; Tr. 117, 863–64.

102. Government's Exhibit 10, provided to the DEA during the 2014 inspection, and Respondent's Exhibit C, provided to the DEA during this hearing, both purport to report the HMC's inventory. *Compare* GE–10, *with* RE–C. A comparison of the two exhibits reveals that many of the reported figures therein do not match, specifically, the methadone 40 mg diskettes, Tr. 541–49, *compare* GE–10, at 1, *with* RE–C, at 1, and the liquid methadone, Tr. 551–59, *compare* GE–10, at 2, *with* RE–C, at 3. For example, the two exhibits record different: amounts of diskettes dispensed in November and December 2013; ending balances in October through December 2013; amounts of liquid methadone dispensed in October through December 2013; and ending balances of liquid methadone in October through December 2013. *Compare* GE–10, at 1–2, *with* RE–C, at 1, 3.

103. The HMC did not produce buprenorphine dispensing logs during the inspection. Tr. 455. Respondent's Exhibit AA is the Respondent's monthly buprenorphine dispensing logs for July 2014 through September 2014. Tr. 117–23. These logs were not provided to the DEA during the 2014 inspection, and were only given to the DEA when this case was already pending. Tr. 132, 135–36, 461–62, 538. Mrs. Ozumba testified that the Respondent's nurses were required to keep daily dosing logs for buprenorphine. Tr. 870.

104. Government's Exhibit 10, Respondent's Exhibit E, and Respondent's Exhibit AA all contain the Respondent's records for its buprenorphine 8 mg tablets. Tr. 592–96, 869. A comparison of the three exhibits reveals several inconsistencies. For example, in June 2014, RE–E records that the HMC dispensed 104 mg of buprenorphine 8 mg tablets, whereas RE–AA records that the HMC dispensed 108 mg of buprenorphine 8 mg tablets, and GE–10 records that the HMC dispensed only 56 mg of buprenorphine 8 mg tablets. *Compare* RE–E, at 8, *with* RE–AA, at 1, *and* GE–10, at 4. Likewise, in September 2014, RE–E records that the HMC dispensed 64 mg of buprenorphine 8 mg tablets, whereas RE–AA records that the HMC dispensed 68 mg of buprenorphine 8 mg tablets, and GE–10 has no entry. *Compare* RE–E, at 5, *with* RE–AA, at 5, *and* GE–10, at 4.

VIII. Remedial Measures

105. After the 2014 inspection, Mrs. Ozumba hired an office manager for the HMC, Garnett, who is experienced in hospital management. Tr. 903. Mrs. Ozumba indicated that she would also be willing to hire a ''compliance specialist.'' Tr. 904.

106. In 2015, Garnett returned to work at the HMC. Tr. 964. At that time, the HMC maintained a perpetual inventory in Excel, but the program did not auto-populate. Tr. 964. The HMC now still uses Excel to maintain its perpetual inventory. Tr. 949.

107. The HMC still maintains a daily dispensing log for each patient. Tr. 951. The HMC's nurses also conduct a physical inventory every day and record the results on forms like RE–X. Tr. 950–52, 965. The data from this daily inventory is entered into the perpetual inventory using a software program called ''Methware.'' Tr. 952, 966. The HMC's perpetual inventory keeps track of the beginning balance, amount dispensed, new receipts, any spillage, and ending balance. Tr. 953–54. After each daily entry is entered into the ''Methware'' program, the information in that entry cannot be changed. Tr. 967.

[50] *Cf.* Tr. 716.

[51] *Contra* Tr. 866 (stating that the Respondent views this documentation as the ''equivalent'' of 222 Forms).

[52] Page four of GE–10 contains no entries for September and October 2014.

[53] During the inspection, the HMC produced different versions of pages one through four of RE–C. Tr. 540.

ANALYSIS

I. Applicable Law

To receive and maintain a DEA COR, a narcotic treatment program must ''comply with standards established by the Attorney General respecting (i) security of stocks of narcotic drugs for such treatment, and (ii) the maintenance of records (in accordance with section 827 of this title) . . . .'' 21 U.S.C. 823(g)(1)(B) (2012).[54] A narcotic treatment program's DEA COR ''may be suspended or revoked . . . upon a finding that the registrant has failed to comply with *any* standard referred to in section 823(g)(1) of this title.'' 21 U.S.C. 824(a) (emphasis added). Reading these two provisions of the Controlled Substances Act together, a narcotic treatment program's DEA COR may be suspended or revoked because of any failure to maintain: (1) the physical security of controlled substances; or (2) proper records. 21 U.S.C. 823(g)(1)(B), 824(a); *see Turning Tide, Inc.,* 81 Fed. Reg. 47411 (2016).[55] As *Turning Tide* discussed in detail, the DEA need not analyze the public interest factors when deciding whether revocation of a narcotic treatment program's registration is appropriate. *Turning Tide,* 81 Fed. Reg. at 47412–13 (examining the statutory construction of 21 U.S.C. 823(g)(1) in comparison with every other category of registration set forth in Section 823). The DEA ''will not hesitate to revoke the registration of a n[a]rcotic treatment program that fails to meet its statutory and regulatory obligations to provide adequate security and recordkeeping.'' *Queens County Med. Soc'y Drug Line,* 50 Fed. Reg. 2098, 2100 (1985).

A narcotic treatment program's registration may be revoked if the narcotic treatment program fails to keep its records as required by federal regulations. 21 U.S.C. 824(a), 823(g)(1)(B); *see, e.g., Herbert Berger, M.D.,* 52 Fed. Reg. 17645, 17645–46 (1987). In this case, the Government alleged that the HMC committed several recordkeeping violations related to: (1) receipt and dispensation records of controlled substances; (2) 222 Forms; (3) retrievable records; (4) biennial and buprenorphine inventories; and (5) controlled substance variances. Additionally, under 21 U.S.C. 824(g), narcotic treatment programs are required to ''maintain security of stocks of narcotic drugs.'' *Queens County,* 50 Fed. Reg. at 2098. In this case, the Government alleged that the Respondent failed to maintain adequate physical security of its controlled substances.

A. Receipt and Dispensation Records

A narcotic treatment program must ''maintain, on a current basis, a complete and accurate record of each substance manufactured, imported, received, sold, delivered, exported, or otherwise disposed of.'' 21 C.F.R. 1304.21(a); *see* 21 U.S.C. 827(a)(3). These records must detail, among other things: (1) the types and quantities of controlled substances received and dispensed; (2) the names and addresses of the persons who receive controlled substances; (3) the dates of dispensing; and (4) the names or initials of the persons who dispense or administer controlled substances. 21 C.F.R. 1304.22(c).

Further, narcotic treatment programs must record the controlled substances ''administered in the course of maintenance or detoxification treatment of an individual.'' 21 C.F.R. 1304.03(d). Specifically, narcotic treatment programs must record, in a dispensing log for each controlled substance, the following information:

(1) Name of substance;
(2) Strength of substance;
(3) Dosage form;
(4) Date dispensed;
(5) Adequate identification of patient (consumer);
(6) Amount consumed;
(7) Amount and dosage form taken home by patient; and
(8) Dispenser's initials.

Id. 1304.24(a)–(b).

B. 222 Forms

A registrant must record the quantity of controlled substances purchased, along with the dates of receipt of the substances, on a copy of a 222 Form. 21 C.F.R. 1305.13(e). In reading the plain language of the regulation, the Agency recently determined that incomplete forms alone could not prove a regulatory violation; instead, it required additional proof that the purchaser actually had an obligation, triggered by the receipt of the ordered substances, to complete the forms, but neglected to do so. *Superior Pharmacy I & Superior Pharmacy II,* 81 Fed. Reg. 31310, 31338 (2016).[56] In other words, the Government must prove that the registrant actually received the ordered controlled substances, but failed to notate it on the 222 Form. This interpretation was reaffirmed by the Agency in *Hills Pharmacy, L.L.C.,* 81 Fed. Reg. 49816, 49842–43 (2016). Additionally, the registrant must maintain Copy 3 of each executed 222 Form separately from all other records of the registrant and make available for inspection for two years. 21 C.F.R. 1305.17(a), (c).

Generally, only DEA registrants ''may obtain and use DEA Form 222 (order forms) or issue electronic orders for [controlled] substances.'' 21 C.F.R. 1305.04(a). This rule has a narrow exception: a DEA registrant may authorize another person to execute 222 Forms on the registrant's behalf by properly executing a power of attorney. *Id.* 1305.05(a). The power of attorney document must be preserved, ''available for inspection,'' *id.,* and ''executed by the person who signed the most recent application for DEA registration,'' *id.* 1305.05(d).

C. Readily Retrievable Records

A registrant's records must be readily retrievable. *Id.* 1304.04(f)(1) and (2) (requiring narcotic treatment programs to maintain records for Schedule II substances separately from all other records, and records for Schedules III, IV, and V controlled substances either separately or in ''such form that the information required is readily retrievable''); *see id.* 1304.03(e) (requiring mid-level practitioners to maintain readily retrievable records). Required records and inventories ''must be kept by the registrant and be available, for at least 2 years from the date of such inventory or records, for inspection and copying by authorized employees of the Administration.'' *Id.* 1304.04(a). The DEA defines ''readily retrievable'' to mean:

that certain records are kept by automatic data processing systems or other electronic or mechanized recordkeeping systems in such a manner that they can be separated out from all other records in a reasonable time and/or records are kept on which certain items are asterisked, redlined, or in some other manner visually identifiable

[54] Before and during the hearing, I asked both parties to state their positions concerning whether a public interest analysis applied to this case. *See* Tr. 21–24; *see also* Tr. 1077–78; ALJ–25. The Government argued that a public interest analysis does not apply. Tr. 23. The Respondent, however, argued that a public interest analysis should apply, and that the factors to be considered should include: the HMC's service towards a low-income demographic; the HMC's compliance with state laws; and the HMC's general history of compliance with controlled substance laws. Tr. 24. The OSC specifically alleges that the Respondent's COR should be revoked under 21 U.S.C. 824(a). However, because the Government stated at the beginning of the hearing that it did not believe that a public interest analysis applied in this case, and the OSC also cites 21 U.S.C. 823(g), the Respondent was on notice that the Government would argue in favor of revocation under 21 U.S.C. 823.

[55] The decision in *Turning Tide* was not published in the **Federal Register** until after the conclusion of the hearing in this case.

[56] *Superior Pharmacy* was published in the **Federal Register** on May 18, 2016, before the conclusion of the hearing in this case.

apart from other items appearing on the records.

Id. 1300.01(b). The DEA ''does not require that records be 'instantaneously produced.''' *Edmund Chein, M.D.,* 72 Fed. Reg. 6580, 6593 (2007). The records must be retrievable in a ''reasonable time.'' *Id.* In *Chein,* the DEA briefly discussed and interpreted the definition of ''reasonable time:''

While what constitutes ''a reasonable time'' necessarily depends on the circumstances, under normal circumstances[,] if a practice is open for business, it should be capable of producing a complete set of records within several hours of the request. In this case, I conclude that on the second visit, the clinic's provision of the records within two to three hours complied with the regulation but barely so. To allow a registrant an even greater period of time to produce the records would create an incentive for those who are engaged in illegal activity to obstruct investigations by stalling for time in the hopes that DEA personnel would eventually give up and leave.

Id. The DEA has also noted that ''readily retrievable'' means producible ''upon demand of those DEA officials charged with conducting inspections.'' *Jeffrey J. Becker, D.D.S.,* 77 Fed. Reg. 72387, 72406 (2012) (citations omitted); *see* 21 C.F.R. 1304.04(a) (requiring records to be maintained for two years ''for inspection and copying by authorized employees of the [DEA]'').

D. Biennial and Buprenorphine Inventories

A registrant must record the quantity of each controlled substance it possesses. 21 C.F.R. § 1304.11(c). A registrant must also inventory ''all stocks of controlled substances on hand at least every two years.'' *Id.* A registrant must keep all inventory records in an accessible form for at least two years after the date of the inventory ''for inspection and copying by authorized employees of the [DEA].'' *Id.* § 1304.04(a); *see id.* § 1304.04(f). Each inventory must include ''a complete and accurate record of all controlled substances on hand on the date the inventory is taken.'' *Id.* § 1304.11(a). This requirement applies to all types of controlled substances that a registrant possesses. *See id.* Notably, inventories of a narcotic treatment program's Schedule II controlled substances must be ''maintained separately from all of the records of the registrant.'' *Id.* § 1304.04(f)(1).

E. Variances

Controlled substance inventories must ''contain a complete and *accurate* record of all controlled substances on hand on the date the inventory is taken.'' *Id.* § 1304.11(a) (emphasis added). Physical inventory counts of controlled substances must be accurate. *See id.* § 1304.11(e)(6). Repeated variances in controlled substance inventories ''manifest[] a casual indifference to [a registrant's] obligation to . . . properly account for its supply of narcotic drugs.'' *See Queens County,* 50 Fed. Reg. at 2100. Moreover, the inability to account for a significant number of dosage units creates a grave risk of diversion. *Med. Shoppe-Jonesborough,* 73 Fed. Reg. 364, 367 (2008); *see also Paul H. Volkman, M.D.,* 73 Fed. Reg. 30630, 30644 (2008) (finding that ''a registrant's accurate and diligent adherence to this obligation is absolutely essential to protect against the diversion of controlled substances''), *pet. for review denied,* 567 F.3d 215, 225 (6th Cir. 2009).

F. Physical Security of Controlled Substances

Narcotic treatment programs are required to maintain physical security controls for controlled substances as set forth in 21 C.F.R. § 1301.72. The Respondent kept its Schedule II controlled substances in a safe. A safe used to store Schedule II controlled substances must be

> equipped with an alarm system which, upon attempted unauthorized entry, shall transmit a signal directly to a central protection company or a local or State police agency which has a legal duty to respond, or a 24-hour control station operated by the registrant, or such other protection as the Administrator may approve.

21 C.F.R. § 1301.72(a)(1)(iii). Section 1301.72 does not require a narcotic treatment program to install a panic button in its dispensing room. *See also id.* § 1301.74(l) (same).

II. The Respondent's Alleged Violations

A. The 1997 Inspection

The Government alleged that, at the time of the 1997 inspection, the HMC had committed four violations: (1) failing to record the amount of controlled substances received; (2) failing to keep 222 Forms; (3) failing to properly maintain daily dispensing records; and (4) having variances in its controlled substances supply. ALJ–1, at 1–2. I find that the Government demonstrated that the HMC committed only the fourth violation.

A majority of the Government's evidence regarding the 1997 inspection related to the fourth allegation. The Government entered evidence showing that the HMC had a shortage of 16,144 mg of methadone tablets and a shortage of 411 mg/mL of liquid methadone. GE–34–36. Mrs. Ozumba admitted that there was a variance in her controlled substance inventory at the time of the 1997 inspection. Tr. 685, 687, 693, 929; *see* GE–37; Tr. 407–09, 675–78. Based upon the Government's undisputed evidence, I find that the HMC had a shortage of methadone tablets and liquid methadone at the time of the 1997 inspection. Therefore, the Government's allegation to that effect is **SUSTAINED** by a preponderance of the evidence, and weighs in favor of revoking the Respondent's COR.

However, the Government did not offer any evidence demonstrating that the HMC committed the first three alleged violations. The Government argued that GE–33–37 showed that the HMC committed the first three alleged violations. *See* ALJ–27, at 3. However, these exhibits only offer evidence supporting findings that: (1) the HMC had a variance; and (2) that variance was due to some unidentified deficiency in the HMC's records. *See* GE–34–37. The Government did not enter *any* evidence about the HMC's receipt records or 222 Forms from the 1997 inspection. Therefore, the Government's allegations that the HMC failed to record the amount of controlled substances received and failed to keep 222 Forms are **NOT SUSTAINED**.

Likewise, the Government did not discuss any inadequacies in the HMC's dispensing record. The Government did not enter any evidence specifically showing that the HMC's daily dispensing records were inadequate at the time of the 1997 inspection. There are numerous possible explanations for how the HMC could have had a shortage of liquid methadone and methadone diskettes. One possible explanation is that the HMC failed to accurately record its dispensing in its daily dispensing log. However, that is only a *possible* explanation, supported by inference rather than substantial evidence. The Government did *not* allege that, *generally,* the HMC's receipt and dispensing logs were inaccurate; rather, it alleged that, *specifically,* the HMC failed to properly maintain daily dispensing logs. Therefore, the Government's allegation that the Respondent failed to properly maintain daily dispensing records in 1997 is **NOT SUSTAINED**.

B. The 1999 Inspection

The Government alleged that, at the time of the 1999 inspection, the HMC

committed two violations: (1) failing to maintain complete and accurate records of Schedule II controlled substances received and dispensed; and (2) having variances in its controlled substances supply. ALJ–1, at 2. I find that the Government showed, by a preponderance of the evidence, that the HMC committed both violations.

The Government entered a closing inventory and a computation chart from the 1999 inspection, which showed that the HMC had an overage of 100,810 mg of methadone diskettes and a shortage of 2,591 mg of liquid methadone. *See* GE–29–30; Tr. 37, 40; *see also* GE–31; Tr. 398–401, 411–13. These documents were corroborated by the Unit Chief's credible testimony that she personally recalled an overage of one of the Respondent's controlled substances and a deficit of the other. Tr. 30–31. While Mrs. Ozumba signed an MOU on behalf of the HMC in March of 2000, which cited the HMC for its failure to maintain a complete and accurate record of Schedule II controlled substances received and distributed, the MOU did not clearly admit or deny that there was a variance at the time of the 1999 inspection. *See* Tr. 685, 689, 696–98; *see also* GE–32. At the hearing, Mrs. Ozumba accepted responsibility for the variance found in 1999, and then denied responsibility for it. *See* Tr. 685, 689. She subsequently went on to specifically deny having a variance of 100,810 mg of diskettes in 1999, stating that she has never had a variance that large. Tr. 696–97; *see* GE–30. I find that the closing inventory, computation chart, and the Unit Chief's testimony, when considered cumulatively, show that the HMC had significant variances in its controlled substances supply at the time of the 1999 inspection. Therefore, the Government's allegation to that effect is **SUSTAINED**. By logical inference, because the HMC had a variance in its controlled substance supply, the HMC's records were not accurate.[57] Therefore, the Government's allegation that the HMC failed to keep complete and accurate records of the Schedule II controlled substances it received and dispensed is **SUSTAINED**, and weighs in favor of revoking the Respondent's COR.

C. The 2006 Inspection

The Government alleged that, at the time of the 2006 inspection, the HMC committed two violations: (1) failing to keep and maintain daily dispensing logs of controlled substances; and (2) having variances in its controlled substances supply. ALJ–1, at 2. I find that the Government showed, by a preponderance of the evidence, that the HMC committed only the second violation.

The Government entered a closing inventory and computation chart from the 2006 inspection showing that the HMC had a shortage of 40 mg[58] of methadone tablets and an overage of 2,954 mg of liquid methadone. GE–23–24; Tr. 224. The methadone diskettes variance did not raise concerns that the HMC was diverting methadone tablets; however, the liquid methadone variance could not be accounted for by overfilling and was not a small or expected variance. Tr. 220–21, 225, 230. Moreover, while Mrs. Ozumba provided DEA with an explanation regarding the variance for the methadone diskettes, which resulted in a reduction of the variance to 40 mg, she did not provide any explanation for the overage of liquid methadone. Tr. 251. Furthermore, the Group Supervisor testified that she personally observed the count of the HMC's controlled substances, that the count was recorded in the computation chart, and that the computation chart was accurate. Tr. 205–11. The Group Supervisor also specifically mentioned in her testimony that there was a variance, and Mrs. Ozumba specifically acknowledged that there was a variance. Tr. 220, 250–51, 930; *see* Tr. 699–702. It is important to note that Mrs. Ozumba's acceptance of responsibility for the variance discovered at the time of the 2006 inspection was unclear. She acknowledged the variance, but believed that it had been resolved by her letter explaining the gap in the monthly perpetual summary records. Tr. 930. I find that the closing inventory, computation chart, Group Supervisor's testimony, and Mrs. Ozumba's ambiguous acceptance of responsibility, when considered cumulatively, show that the HMC had variances in its controlled substances supply at the time of the 2006 inspection. Therefore, the Government's allegation to that effect is **SUSTAINED**, and weighs in favor of revoking the Respondent's COR.

However, the Government did not enter any evidence specifically showing that the HMC's daily dispensing records were inadequate at the time of the 2006 inspection. In fact, the record evidence establishes that the HMC produced all of the forms or documents requested by the DEA in 2006. Tr. 630. There are numerous possible explanations for how the HMC could have had a shortage of one methadone diskette and an overage of liquid methadone. One possible explanation is that the HMC failed to accurately record its dispensing in its daily dispensing log. However, that is only a *possible* explanation, supported by inference rather than substantial evidence. The only mention of alleged errors in the daily dispensing records was in the letter of admonition sent to the HMC, GE–26, which, standing alone, does not prove that the HMC's dispensing logs were errant. The Government has not entered evidence showing any specific defects in the HMC's dispensing logs, and has not entered copies of the HMC's dispensing logs to support its allegation. In fact, the evidence before me indicates that the HMC, up until the time of the 2006 inspection, kept meticulous daily dispensing records. GE–27; Tr. 626–28, 878. The Government failed to show, by a preponderance of the evidence, that the HMC failed to maintain daily dispensing records. Therefore, the Government's allegation to that effect is **NOT SUSTAINED**.

D. The 2011 Inspection

The Government alleged that, at the time of the 2011 inspection, the HMC had eight violations: (1) failing to provide records in a timely manner; (2) failing to conduct a biennial inventory; (3) failing to preserve 222 Forms for two years; (4) failing to maintain complete and accurate records of each controlled substance received;[59] (5) allowing an unauthorized person to sign 222 Forms; (6) failing to execute a power of attorney to allow an unauthorized person to sign 222 Forms; (7) failing to ''completely and accurately complete'' daily dispensing logs; and (8) failing to maintain adequate physical security of controlled substances. ALJ–1, at 2. I find that the Government showed, by a preponderance of the evidence, that the HMC committed the first, second, third, part of the fourth, and eighth violations.

There is significant disagreement between the parties over whether the HMC produced its records in a timely manner during the 2011 inspection. I find that the HMC did not produce these records ''upon demand,'' *Becker,* 77 Fed. Reg. at 72406, or within a ''reasonable time,'' *Chein,* 72 Fed. Reg. at 6593. The HMC had several days to locate the required documents and make

[57] Unlike the Government's specific recordkeeping allegation concerning the 1997 inspection, the 1999 allegation concerning recordkeeping errors is a general allegation.

[58] *See* Tr. 251 (indicating that this amount is the equivalent of one methadone tablet).

[59] The Government failed to distinguish between 222 Forms, discussed in the third allegation, and receipt records, discussed in the fourth allegation. Therefore, I consider the third allegation to address whether the 222 Forms were properly preserved and the fourth allegation to address whether the 222 Forms were properly completed.

them available for inspection, and still failed to do so. ''To allow a registrant an even greater period of time to produce the records would create an incentive . . . to obstruct investigations by stalling for time in the hopes that DEA personnel would eventually give up and leave.'' *Chein,* 72 Fed. Reg. at 6593.

The Respondent contends that it provided all required documents to the Case Agent, who refused to look at those documents for an unknown reason. ALJ–27, at 4–5. I do not find this position, supported by Mrs. Ozumba's testimony, Tr. 722–23, 887, 890, 1012 (Dr. Ozumba), to be credible for three reasons. First, it makes little sense that DEA investigators would go to the HMC on two separate days to conduct an investigation, and on the second day come back into the HMC after having left, only to refuse to examine documents that Mrs. Ozumba claims were provided to the investigators. Second, the Case Agent credibly testified that the Ozumbas did not provide the necessary documentation, despite the DEA investigators' attempts to work with the Ozumbas for over two hours. Third, Mrs. Ozumba felt it necessary to enter into a settlement agreement with the United States Attorney's Office when the HMC was civilly charged for its alleged recordkeeping violations. *See* Tr. 1055–57.

The Government attempts to establish liability on the part of the HMC through the use of the ''Stipulated Agreement'' Mrs. Ozumba signed on March 26, 2013. GE–7; ALJ–27, at 6–7. Based upon the results of the 2011 inspection, the DEA pursued a civil fine from the Respondent. Tr. 291. The United States Attorney's Office handled the case against the Respondent, which dealt solely with alleged recordkeeping violations. Tr. 1055. The HMC eventually negotiated a settlement with the United States Attorney's Office. Tr. 1056–57.

Federal Rule of Evidence 408 prohibits the use of a settlement agreement to prove or disprove the validity of a claim.[60] Fed. R. Evid. 408(a). ''It is well-established that statements made for purposes of settlement negotiations are inadmissible, and Rule 408 of the Federal Rules of Evidence extends the exclusion to completed compromises when offered against the compromiser.'' *Playboy Enters., Inc.* v. *Chuckleberry Publ'g, Inc.,* 486 F. Supp. 414, 423 n.10 (S.D.N.Y. 1980) (citation omitted). Because settlement agreements may not be used to establish liability, the Government cannot rely on the Stipulated Agreement to prove that the Respondent committed recordkeeping violations in 2011. Moreover, even if Federal Rule of Evidence 408 did not apply, the Stipulated Agreement specified that it ''does not constitute evidence or an admission by any person or entity, and shall not be construed as an admission by any person or entity, with respect to any issue of law or fact.'' GE–7, at 7.

Settlement agreements, however, may be admitted for a purpose other than to establish liability. Fed. R. Evid. 408(b); *see Manko* v. *United States,* 87 F.3d 50, 54–55 (2d Cir. 1996). Therefore, use of the Stipulated Agreement in this case has been limited to establishing that such an agreement existed between the HMC and the DEA and that the HMC knew of alleged recordkeeping violations found in 2011.

Mrs. Ozumba did not provide any of the HMC's records to the DEA on the first day of the inspection, and she did not provide any records for several hours on the second day of the inspection. Tr. 280–81. Even when Dr. Ozumba brought the keys to unlock the dosing room on day two, the HMC did not produce any 222 Forms from the audit period, even though the HMC should have had five 222 Forms. Tr. 306–14. The HMC also did not produce a biennial inventory. Tr. 477. During the inspection, the HMC was even unable to produce the records that the DEA needed to conduct an audit. Tr. 477. Considering these circumstances in their totality, I find that the HMC did not, at the time of the inspection, provide all of the required documents to the DEA investigators. Because the HMC was unable to produce some of its records over the course of several days during the 2011 inspection, the Government's allegation that the Respondent failed to provide records in a timely manner is **SUSTAINED**, and weighs in favor of revoking the Respondent's COR.

I also find that the HMC did not conduct a biennial inventory. Although the DEA investigators requested such an inventory from the HMC, the HMC did not provide one. Tr. 477. Because I find the Case Agent's testimony on this point to be credible for the reasons discussed *supra,* the Government's allegation that the Respondent did not conduct a biennial inventory is **SUSTAINED**, and weighs in favor of revoking the Respondent's COR.

The HMC did not produce any of its 222 Forms from the audit period upon the DEA investigators' request, even though the HMC should have had five 222 Forms from that period. Tr. 306–14; *see* GE–6, at 1–5. Because I find the Case Agent's testimony on this point to be credible for the reasons discussed *supra,* the Government's allegation that the Respondent did not preserve its 222 Forms is **SUSTAINED**, and weighs in favor of revoking the Respondent's COR. However, because the Respondent did not provide any 222 Forms, the Government cannot show that the HMC failed to properly complete such forms. Moreover, the Government did not enter any evidence demonstrating that the HMC failed to properly complete its receipt records. Therefore, the Government's allegation that the Respondent failed to properly complete 222 Forms is **NOT SUSTAINED**.

The Government was, however, able to obtain the Supplier's Copy of the HMC's 222 Forms from the audit period, which are presented in GE–6. Tr. 312–15. The signatures on these forms are not legible.[61] The Government did not offer any evidence regarding whose signature appeared on the forms in GE–6. *See* Tr. 309. Moreover, it is unclear from the record whether Dr. Ozumba or Mrs. Ozumba had e-signature authority for the Respondent during the 2011 inspection's audit period. *See* Tr. 279. These were the only 222 Forms entered into evidence from the audit period. Because it is unclear who signed the forms, it is equally unclear whether such person was authorized to sign 222 Forms. Therefore, the Government's allegations that the Respondent allowed an unauthorized person to sign 222 Forms, and failed to execute a power of attorney to allow such person to do so, are both **NOT SUSTAINED**.[62]

The record indicates that the HMC did keep daily dispensing logs. Franks testified that she recorded into a computer file the amount of medication she dispensed each day, printed out that information, and put that information in a binder that was stored in the medication room. Tr. 163–71; *see, e.g.,* RE–G–H. Additionally, the record

[60] Although the Federal Rules of Evidence do not govern DEA administrative hearings, they can provide useful guidance ''where they do not conflict with agency regulations.'' *Rosalind A. Cropper, M.D.,* 66 Fed. Reg. 41040, 41041 (2001) (citation omitted).

[61] A layman's review of the signatures, however, finds them to share similarities with Mrs. Ozumba's signature. *Compare* GE–6, *with* GE–3, 27, 32, 33.

[62] Importantly, Franks did testify that she was allowed to sign 222 Forms on behalf of the Respondent. Tr. 153. Franks did not testify as to when she was allowed to do so. However, the evidence shows that Franks signed several 222 Forms *after* the 2011 inspection. *See* RE–BB, at 1–6, 8; Tr. 155–57. Therefore, I find that Franks' testimony, standing alone, does not constitute substantial evidence that an unauthorized person was signing 222 Forms during the audit period of the 2011 inspection.

shows that the Respondent produced its dispensing logs to the DEA upon the investigators' request, but the Government did not introduce into evidence any of those logs concerning the one-year audit period. Tr. 291–92, 477, 751, 886.

The HMC offered evidence of the type of dispensing records it was maintaining around the time of the 2011 inspection. Respondent's Exhibit G contains the daily dispensing logs for methadone diskettes from October 1, 2011, to December 30, 2011. Tr. 852–53. Likewise, RE–H contains the daily dispensing logs for liquid methadone from October 14, 2011, to December 31, 2011. Tr. 854–55. Most of the records contained in RE–G are from outside of the 2011 inspection's audit period, and the records do not show the actual pharmaceutical name of the drug dispensed. Tr. 854, 920–24. Rather, they show that ''DRT'' tablets were dispensed, and they also record the strength in milligrams. RE–G. All of the records contained in RE–H are from outside of the 2011 inspection's audit period, and the records do not show the actual pharmaceutical name or strength of the drugs represented therein. Tr. 854, 920–24. Rather, they show that liquid ''LMT'' was dispensed and the dosage dispensed in milligrams. RE–H; Tr. 854, 923–24.

Here, the Government has failed to present substantial evidence to show that the HMC failed to ''completely and accurately complete the daily dispensing logs.'' ALJ–1, at 2. In fact, the Government presented no documentary evidence from the audit period to document the alleged failure. At the hearing, the Government attempted to demonstrate shortcomings in RE–G and RE–H because they did not list the pharmaceutical name of the drugs dispensed or the strength. Tr. 920–24. I find the Government's questioning unconvincing for several reasons. First, Mrs. Ozumba testified that RE–G and RE–H were not the only dosing sheets; they represent a general daily dispensing sheet, and the HMC also used an individualized sheet. Tr. 922. Second, there is no requirement in 21 C.F.R. 1304.24(a) that the dispensing log specifically list the pharmaceutical name. Here, it is absolutely clear that the DEA investigators understood the terms DRT and LMT, and in fact, Mrs. Ozumba testified that she sometimes ordered liquid methadone using the term LMT. Tr. 919–20. Third, it is clear from the record that the HMC only ordered one strength of each form of methadone it used,[63] and the DEA investigators were well aware of that. Tr. 924–25. Finally, the strength of the dosage of the DRT is contained in the general dispensing sheets in RE–H, which lists the dosage in milligrams. *See, e.g.,* Tr. 917–18. Since the administrative record contains no dosing sheets for the audit period of the 2011 inspection, with the exception of pages one through eleven of RE–G, and since I find that those pages generally comply with the requirements of 21 C.F.R. 1304.24(a), I find that the Government has not met its burden in demonstrating that the HMC failed to completely and accurately complete the daily dispensing logs. Therefore, the Government's allegation that the Respondent failed to ''completely and accurately complete'' daily dispensing records is **NOT SUSTAINED**.

Finally, concerning the 2011 inspection, the HMC's security system was not working properly at the time of the inspection because the security company did not receive signals from various security zones in the clinic. Tr. 288–89, 532–33. While the HMC corrected these security issues within a week of the inspection, Tr. 290–91, 533, 739–40, 901, the regulations require a narcotic treatment program's controlled substance safe to be ''equipped with an alarm system which, upon attempted unauthorized entry, shall transmit a signal directly'' to its security company. 21 C.F.R. 1301.72(a)(1)(iii). The evidence shows that the HMC's system did not transmit this signal directly during the 2011 inspection. Therefore, the HMC's system did not comply with the requirements of 21 C.F.R. 1301.72, and the Government's allegation that the Respondent failed to maintain adequate physical security of its controlled substances is **SUSTAINED**,[64] and weighs in favor of revoking the Respondent's COR.

E. The 2014 Inspection

The Government alleged that, at the time of the 2014 inspection, the Respondent had committed eight violations: (1) failing to maintain complete and accurate records of controlled substances received, sold, and delivered; (2) failing to conduct a biennial inventory; (3) failing to conduct an inventory of buprenorphine; (4) failing to preserve 222 Forms for two years;[65] (5) failing to indicate the date of receipt of 222 Forms; (6) failing to execute a power of attorney authorizing an alternate person to sign 222 Forms; (7) failing to completely and accurately complete daily dispensing logs; and (8) having a variance in its controlled substance inventory. ALJ–1, at 3. I find that the Government showed, by a preponderance of the evidence, that the HMC committed the first, third, fourth, sixth, and eighth violations.

The Government entered into evidence a closing inventory and a computation chart from the 2014 inspection, which showed that the HMC had an overage of 1,200,050 dosage units of methadone diskettes, an overage of 500,251 dosage units of liquid methadone, a shortage of 30 buprenorphine 2 mg tablets, and a shortage of 175 buprenorphine 8 mg tablets. GE–9, 11; Tr. 375–80. I find that the closing inventory, computation chart, and the testimonies of McSwain and the Case Agent, when considered cumulatively, show that the HMC had variances in its controlled substances supply at the time of the 2014 inspection. By logical inference then, because the Respondent had a variance in its controlled substance supply, the Respondent's records were not accurate, particularly since the overages and shortages were calculated using the HMC's receipt records.[66] Tr. 379. Therefore, the Government's allegations that the Respondent failed to maintain complete and accurate records of controlled substances received, sold, and delivered, and that there was a variance in the HMC's controlled substance inventory, are **SUSTAINED**, and weigh in favor of revoking the Respondent's COR.

The Respondent did not provide the DEA with a biennial inventory. Tr. 329, 521. However, the Respondent provided the DEA with separate annual inventories for methadone diskettes and liquid methadone, as well as for 2 mg and 8 mg buprenorphine. GE–10, at 1–4; Tr. 368–70, 584. Notably, the regulations require a registrant to

[63] For methadone diskettes, the HMC ordered 40 mg, and for liquid methadone, the HMC ordered 1 mg/mL. Tr. 924–25.

[64] The Government discussed the fact that the HMC's dosing room did not have a panic button during the 2011 inspection. Tr. 289, 533. However, narcotic treatment programs are not required by federal regulations to have panic buttons in their dosing rooms. *See generally* 21 C.F.R. 1301.72; *see also id.* § 1301.74(l); Tr. 601–02. Thus, to the extent that the Government alleges that the HMC failed to maintain physical security of its controlled substances by not installing panic buttons in its dosing room, that allegation is **NOT SUSTAINED**.

[65] In its case, the Government failed to distinguish between receipt records, discussed in the first allegation, and 222 Forms, discussed in the fourth allegation. Therefore, I consider the first allegation to address whether the 222 Forms were properly completed, and the fourth allegation to address whether the 222 Forms were properly preserved.

[66] Unlike the Government's specific recordkeeping allegation concerning the 1997 inspection, the 2014 allegation concerning recordkeeping errors is a general allegation.

inventory its controlled substances ''*at least* every two years.'' 21 C.F.R. 1304.11(c) (emphasis added). If a registrant counts its controlled substances every day and records that count in a manner that satisfies the Code of Federal Regulations' biennial inventory requirements, that daily inventory is considered to be an adequate biennial inventory. Tr. 246. Further, there is consistent credible testimony in the record that the dispensing nurses conducted a daily inventory of the controlled substances at the HMC. *See* Finding of Fact 4. Thus, the annual inventory provided to the DEA investigators would have been a sufficient inventory. The Government did not allege that the HMC's inventory was inadequate; the Government only alleged that the HMC *failed to conduct* a biennial inventory. The HMC presented an inventory to the DEA investigators, and testimony supports that actual inventories were frequently conducted; therefore, the Government's allegation that the Respondent failed to conduct a biennial inventory is **NOT SUSTAINED**.[67]

The Government also alleged that the HMC failed to conduct an inventory of buprenorphine. The HMC did not produce an initial inventory for buprenorphine. Tr. 456. Rather, the Case Agent saw McSwain attempting to create a buprenorphine inventory, at Mrs. Ozumba's direction, during the 2014 inspection to present to the DEA investigators. Tr. 92–94, 326. The Case Agent told McSwain to print off what she had without editing anything further. Tr. 326. These print-outs are pages three and four of GE–10. The Code of Federal Regulations, however, requires that an inventory of a controlled substance be taken on the date that a registrant ''first engages in the . . . dispensing of controlled substances.'' 21 C.F.R. 1304.11(b). Comparing the timeframes reflected on pages three and four of GE–10 with the timeframes reflected on page one of RE–E, and the dates reflected in RE–AA, and considering McSwain's and the Case Agent's testimonies, I find that the buprenorphine ''inventory'' presented to the DEA investigators during the inspection was not made during an actual physical count of the HMC's controlled substances and, therefore, was not an inventory under 21 C.F.R. 1304.11(b). Therefore, the Government's allegation that the Respondent failed to conduct an inventory of buprenorphine is **SUSTAINED**, and weighs in favor of revoking the Respondent's COR.

In the fourth allegation, the Government charged that the HMC failed ''to preserve DEA 222 Order Forms.'' ALJ–1, at 3. In support of that allegation, the Government cited to 21 C.F.R. 1305.17(a). *Id.* Nowhere prior to the hearing did the Government allege that the HMC failed to make its 222 Forms readily available for inspection. The HMC provided some 222 Forms from the 2014 audit period in response to the request of the DEA investigators. GE–13, at 1–4; Tr. 354–55; *see also* Tr. 89, 132–33, 1043. In conducting her audit, the Case Agent prepared a list of 222 Forms she had received from the HMC with a list of 222 Forms she obtained from the HMC's supplier. GE–16. On that list, the items in bold supposedly were not provided by the HMC to the DEA.[68] While the HMC provided additional 222 Forms to DEA after the date of the inspection, the DEA did not include them in its audit of the HMC because they were received after the completion of the audit. Tr. 354, 366–67. Nevertheless, there is one form that the Government identified, DEA Order form number 134110207, dated August 1, 2014, which the HMC has not produced. GE–16. Therefore, the Government's allegation to that effect is **SUSTAINED**, and weighs in favor of revoking the Respondent's COR.

The record also establishes that the HMC submitted an incomplete 222 Form, dated September 9, 2014, that failed to indicate the number of packages received or the date of receipt. GE–13, at 1; Tr. 354–55. However, the Government failed to submit evidence that the HMC actually received the ordered controlled substances and thereby failed to make a notation on the 222 Form.[69] Therefore, the Government's allegation to that effect is **NOT SUSTAINED**.

The Respondent also submitted a December 3, 2013 222 Form that bore Dr. Ozumba's signature, instead of Mrs. Ozumba's. GE–13, at 2; Tr. 355. The regulations permit only DEA registrants to issue orders for Schedule I and II controlled substances, unless a power of attorney authorizing another person to do so has been properly executed. 21 C.F.R. 1305.04(a), 1305.05(a). The power of attorney must be issued by the DEA registrant. 21 C.F.R. 1305.05(a). The power of attorney must be retained with executed 222 Forms. *Id.* When Dr. Ozumba signed the 222 Form, Mrs. Ozumba was the DEA registrant for the HMC. Tr. 327. The DEA requested the HMC's power of attorney forms. Tr. 96, 1043. While McSwain knew that a power of attorney form had been prepared, she could not find it. Tr. 96. Ultimately, however, Dr. Ozumba provided the Case Agent with two power of attorney forms. Tr. 327–29, 389–92. The first form was a blank power of attorney that was prepared for Dr. Orette's signature, but Dr. Orette was not authorized to sign a power of attorney on behalf of the HMC because he was not the HMC's DEA registrant. GE–21; Tr. 390, 598–99. The second form was a new power of attorney signed on the day of the inspection, which was purportedly signed without any witnesses, with ''C. Ozumba'' written in as the grantor, no name written in as the ''attorney-in-fact,'' and McSwain's name signed as the ''person granting power.'' GE–20; Tr. 97, 328–29, 395–96. Even if this form had been properly executed, it did not authorize Dr. Ozumba to sign 222 Forms for Mrs. Ozumba, who was the registrant for the HMC. Therefore, the Government's allegation that the Respondent failed to execute a power of attorney to authorize an alternate person to sign 222 Forms is **SUSTAINED**, and weighs in favor of revoking the Respondent's COR.

Finally, the Government alleged that the HMC failed to completely and accurately complete daily dispensing logs for the controlled substances it dispensed. The record demonstrates that upon request, the HMC provided DEA with dispensing logs from October 1, 2013 through October 14, 2014 for methadone diskettes, and dispensing

[67] The Respondent also provided evidence that it created a monthly inventory generated from the daily dosing records. Tr. 114–15, 129. However, the record evidence indicates that this inventory did not involve an actual physical count of the Respondent's controlled substances on hand. *See* Tr. 114–15, 129. For an inventory to satisfy the requirements of 21 C.F.R. 1304.11, the inventory must record a count of ''all controlled substances on hand on the date the inventory is taken.'' 21 C.F.R. 1304.11(a). The monthly ''inventories'' do not satisfy this requirement and are properly considered to be monthly summaries of the dispensing logs, rather than actual inventories under the regulations.

[68] The Case Agent's chart contains errors. For example, it reports that the DEA did not receive the 222 Form dated June 24, 2014, concerning liquid methadone and bearing DEA Order form number 134110205. GE–16. The DEA, however, obtained that form during its inspection on October 14, 2014, while at the HMC. GE–13, at 3. Other errors are also present on the Case Agent's document. She reports that DEA Order form numbers 130355192, 130355182, 130355184, and 134110205 were not provided by the HMC. GE–16. That information is wrong. *See* GE–14, at 4–7. See also RE–BB, at 24–27, for comparison.

[69] *See Superior Pharmacy,* 81 Fed. Reg. at 31338; *Hills Pharmacy,* 81 Fed. Reg. at 49842–43. The Government's exhibits do not contain information even from the supplier regarding whether the substances purchased through the (allegedly incomplete) September 9, 2014 222 Form were shipped. Government's Exhibit 15 includes a ship date of September 12, 2014, but the items shipped do not match those listed on the HMC's September 9, 2014 222 Form. *Compare* GE–13, at 1, *with* GE–15.

logs from September 30, 2013 through October 31, 2014 for liquid methadone. Tr. 105, 107, 135, 422, 456–57, 607, 847–48, 849–50, 915, 1043–44; *see* RE–A–B. Using the same rationale that I applied to a similar allegation regarding the 2011 inspection, I find that the Government has not met its burden of proof with respect to the dispensing records contained in RE–A–B. Therefore, the Government's allegation that the Respondent failed to completely and accurately complete daily dispensing logs for methadone diskettes and liquid methadone is **NOT SUSTAINED**.

With respect to the dispensing logs for buprenorphine, the HMC did not provide any during the inspection. In support of that allegation, the Government cited to 21 C.F.R. 1304.24(a). ALJ–1, at 3. Nowhere prior to the hearing did the Government allege that the HMC failed to make dispensing records readily available for inspection. At the hearing, the HMC provided for the first time the dispensing logs for buprenorphine. RE–AA; Tr. 461–62, 538. I find that those logs comply with the requirements of 21 C.F.R. 1304.24(a). I further find that the HMC was not on notice that it would have to respond to a charge of failing to have its buprenorphine dispensing logs readily available for inspection. *CBS Wholesale Distribs.,* 74 Fed. Reg. 36746, 36749 (2009) (''One of the fundamental tenets of Due Process is that Agency must provide a Respondent with notice of those acts which the Agency intends to rely on in seeking the revocation of its registration . . . .'' (citations omitted)). Therefore, the Government's allegation that the Respondent failed to completely and accurately complete daily dispensing logs for buprenorphine is **NOT SUSTAINED**.

III. Notice of Misconduct

The Government alleged that the HMC was given several chances to comply with DEA registration requirements. First, the DEA issued a Letter of Admonition to the HMC on May 1, 1997, detailing the deficiencies noted during the April 1997 inspection. Second, the DEA and Mrs. Ozumba entered into an MOU on March 13, 2000, wherein she acknowledged the HMC's violations from the December 6, 1999 inspection, and she agreed to comply with DEA requirements. Third, the DEA issued a Letter of Admonition to the HMC on September 26, 2006, based on the September 8 and 11, 2006 inspection. Fourth and finally, the HMC agreed to pay a $10,000 penalty on April 3, 2013, to settle the DEA's civil claims about violations discovered during the October 11 and 13, 2011 inspection, even though the Respondent denied culpability.

Past behavior is the best predictor of future behavior. *ALRA Labs., Inc.* v. *DEA,* 54 F.3d 450, 452 (7th Cir. 1995). A narcotic treatment program's history of violations is relevant when evaluating whether revocation is appropriate. *Queens County,* 50 Fed. Reg. at 2099. For example, in *Berger,* the Agency revoked a narcotic treatment program's registration because the program had ample notice of its recordkeeping violations and controlled substance variances and, yet, continued to be noncompliant. 52 Fed. Reg. at 17645–46. In that case, the DEA, over the course of eleven years, notified the registrant of its recordkeeping violations, discussed the violations with it, and gave it time to correct the violations. *Id.* The DEA found that the registrant ''consistently failed to maintain complete and accurate records,'' even though it had ''been given every opportunity by DEA to comply with the regulations.'' *Id.* at 17645.

Here, the record shows that the HMC has had several opportunities to conform its behavior and recordkeeping to federal regulatory requirements and has consistently failed. Time and time again, the HMC was notified of its failings, but has yet to demonstrate that it can be a responsible registrant. While the Government has not proven each and every allegation set forth in the OSC, it need not do so. Rather, the law merely requires the Government to establish a noncompliance on the part of the Respondent with the standards respecting physical security and maintenance of records set forth by the Attorney General. As discussed *supra,* it has done so. Therefore, the preponderant evidence weighs in favor of the sanction sought by the Government.

IV. The Respondent's Defenses

The Respondent argued in its prehearing statement that its significant and longstanding service to the community should be considered in evaluating whether its continued registration is appropriate. ALJ–6, at 3–4, 5; ALJ–14, at 5; Tr. 24–25. This argument fails for two reasons. First, the Respondent declined to present any community impact evidence at the hearing. Second, even if the Respondent had presented such evidence, community impact evidence is generally considered to be irrelevant to DEA revocation proceedings. *See, e.g., Linda Sue Cheek, M.D.,* 76 Fed. Reg. 66972, 66973 (2011) (noting that the DEA is not required to ''consider community impact evidence''); *Bienvenido Tan, M.D.,* 76 Fed. Reg. 17673, 17694 n.58 (2011); *see also Holiday CVS, L.L.C.,* 77 Fed. Reg. 62316, 62339 (2012) (''Normal hardships to the practitioner and even to the surrounding community . . . are not relevant considerations.'' (citations omitted)); *Mark De La Lama, P.A.,* 76 Fed. Reg. 20011, 20020 n.20 (2011) (declining to consider a registrant's service to underserved and underinsured persons); *Steven M. Abbadessa, D.O.,* 74 Fed. Reg. 10077, 10078 (2009) (declining to consider the hardship imposed by the lack of a DEA registration).

The Respondent also argued that the amount of time that has passed since some of its violations mitigates its misconduct. ALJ–14, at 11–12. In most DEA cases, the mere amount of time that has passed since a Respondent's misconduct is not a relevant consideration in weighing the public interest factors. *See, e.g., Tyson D. Quy, M.D.,* 78 Fed. Reg. 47412, 47418 (2013); *Leonardo V. Lopez, M.D.,* 54 Fed. Reg. 36915, 36916 (1989); *see also Robert G. Hallermeier, M.D.,* 62 Fed. Reg. 26818, 26821 (1997); *John Porter Richards, D.O.,* 61 Fed. Reg. 13878, 13879 (1996); *Norman Alpert, M.D.,* 58 Fed. Reg. 67420, 67421 (1993). However, narcotic treatment programs are evaluated under 21 U.S.C. § 823(g), which does not include a consideration of public interest factors, as discussed *supra.*

A narcotic treatment program's registration may be revoked based on *any* violation of any standard referred to in 21 U.S.C. § 823(g)(1). 21 U.S.C. § 824(a). Factors are not weighed, and conduct is not mitigated; the plain language of the Controlled Substances Act allows for revocation based on a single violation. Here, the Government has shown far more than one violation of federal regulations.

Although this is not a case in which public interest factors are weighed, it is a case wherein the Government seeks the revocation of a registrant's COR. Therefore, it is appropriate to apply standard considerations to that question. In that regard, once the Government presents a *prima facie* case for revocation, the burden of production shifts to the registrant to present ''sufficient mitigating evidence'' to show why it can be entrusted with a registration. 21 U.S.C. § 823(g)(1)(B) (connecting registration with a determination that there will be compliance with security and records maintenance requirements); *see Med. Shoppe—Jonesborough,* 73 Fed. Reg. at 387 (quoting *Samuel S. Jackson, D.D.S.,* 72 Fed. Reg. 23848, 23853 (2007)). To

rebut the Government's *prima facie* case, a registrant must both accept responsibility for its actions and demonstrate that it will not engage in future misconduct. *Patrick W. Stodola, M.D.,* 74 Fed. Reg. 20727, 20734 (2009). The registrant may show acceptance of responsibility by providing evidence of remorse, efforts at rehabilitation, and recognition of the severity of its misconduct. *Robert A. Leslie, M.D.,* 68 Fed. Reg. 15227, 15228 (2003).

The registrant must accept responsibility and take remedial measures for each separate act of misconduct that it committed. *The Lawsons, Inc.,* 72 Fed. Reg. 74334, 74339 (2007); *see Jeffrey Patrick Gunderson, M.D.,* 61 Fed. Reg. 26208, 26211 (1996) (noting that a registrant must demonstrate remorse to the full extent of the documented misconduct). Acceptance of responsibility and remedial measures are assessed in the context of the ''egregiousness of the violations and the [DEA's] interest in deterring similar misconduct by [the] Respondent in the future as well as on the part of others.'' *David A. Ruben, M.D.,* 78 Fed. Reg. 38363, 38364 (2013) (citation omitted). Here, the HMC must have accepted responsibility and taken adequate remedial measures regarding its recordkeeping and security violations.

In this case, Mrs. Ozumba has only taken responsibility for the allegations surrounding the 1997 inspection, and for being absent from the HMC during the 2014 inspection. Tr. 685, 687, 693, 929, 934. Applying the adage of ''actions speak louder than words,'' it would appear that the HMC has also accepted responsibility for the security violations that were identified in the 2011 inspection. Those security concerns were addressed within a week of the inspection, and the HMC was not cited for any security violations in the 2014 inspection. Tr. 290–91, 533, 739–40, 901. Were the security issues the only matter pending before me, I would find that the HMC had presented sufficient mitigating evidence to show why it could be entrusted with a registration.

Mrs. Ozumba testified that with respect to the 1999 and 2006 inspections, she considered the matters resolved based upon her responses to the DEA shortly after those inspections. Tr. 697–98, 690–92, 694. She also sent letters to the DEA after these inspections indicating steps she had taken to ensure further compliance with federal regulations. *See* GE–27, 37. In addition, in both the 2000 MOU and the 2013 Stipulated Agreement, the HMC agreed to comply with federal regulations governing the handling of controlled substances. *See* GE–7, 32. Unfortunately, there is no other evidence in the administrative record that supports a conclusion that the HMC's prior violations were resolved, and the record does not support a conclusion that the terms of the MOU or the Stipulated Agreement have had any significant effect on the manner in which the HMC has maintained its records.

Of note, Mrs. Ozumba indicated that she had conducted training after the 2006 inspection, yet Bultron did not recall the HMC implementing any new policies, procedures or training after the 2006 inspection. GE–27; Tr. 239–40, 638. Mrs. Ozumba also testified that she had created a new form after the 2006 inspection, but her office manager, Garnett, testified that he created the form in 2012. Tr. 931–35, 964–77; *see also* RE–X. In fact, there has been little change in the HMC's recordkeeping from 1997 through 2014. *See* Findings of Fact 1–5, 42. Furthermore, where a registrant has not accepted responsibility for its actions, remedial measures are not relevant. *See Hoxie* v. *DEA,* 419 F.3d 477, 483 (6th Cir. 2005) (recognizing the importance of admitting fault). As discussed *supra,* the HMC has not accepted responsibility for its regulatory violations; therefore, any evidence of remedial measures is inconsequential. Therefore, the Respondent has failed to rebut the Government's *prima facie* case.

RECOMMENDATION

''One of the requirements for registration of a narcotic treatment program is that the program, comply with standards established by the Attorney General respecting . . . the maintenance of records (in accordance with section 827 of this title) on such drugs.'' *Berger,* 52 Fed. Reg. at 17646 (internal quotation marks omitted). ''The Administrator will not hesitate to revoke the registration of a n[a]rcotic treatment program that fails to meet its statutory and regulatory obligations to provide adequate security and recordkeeping.'' *Queens County,* 50 Fed. Reg. at 2100.

The HMC has had a relatively long history of violating the Controlled Substances Act and its implementing regulations. More specifically, over the course of seventeen years and five inspections, the HMC has consistently failed to keep complete and accurate records concerning the receipt, accounting, and dispensing of narcotic substances and on one occasion was found to have inadequate security for its controlled substances. Even more troubling is the fact that, as discussed *supra,* the HMC has been warned on several occasions of its recordkeeping failings and has been provided multiple opportunities to correct them. Despite those efforts for compliance, the HMC has consistently failed.

''Diversion, and the potential diversion of methadone from narcotic treatment programs, is of grave concern to the Administrator. . . . The DEA regulation and supervision of these programs is intended to prevent the loss and diversion of methadone.'' *Queens County,* 50 Fed. Reg. at 2099–2100. A respondent who ''manifests a casual indifference to its obligation to provide adequate security, to keep complete and accurate records, and to properly account for its supply of narcotic drugs'' is unfit to handle narcotic substances. *Id.* at 2100.

The record, as a whole, reveals a casual indifference on the part of the HMC to maintain adequate security and to keep complete and accurate records of its narcotic drug receipts, accounts, and dispensings. It also reflects that the HMC's past failures are likely to continue. ''The integrity of the controlled substances distribution system, particularly where highly abusable, dangerous, and much sought-after drugs such as methadone are concerned, is too important a consideration to be left to speculation.'' *Metro Substance Abatement Program, Inc.,* 45 Fed. Reg. 78845, 78848 (1980). ''To hope that the Respondent will operate responsibly in the future, in light of its well-documented past performance, would be speculative at best.'' *Id.* The HMC's consistent noncompliance with federal law despite having been afforded every opportunity to comply demonstrates that it cannot be entrusted with a registration. ''The public should not be placed at the risk of . . . diversion any longer.'' *Queens County,* 50 Fed. Reg. at 2100.

Therefore, I **RECOMMEND** that the Respondent's DEA Certificate of Registration be **REVOKED** and any applications for renewal or modification of its registration be **DENIED**.

Dated: September 30, 2016.

Charles Wm. Dorman,

Administrative Law Judge.

[FR Doc. 2018–17889 Filed 8–17–18; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–488P]

Proposed Aggregate Production Quotas for Schedule I and II Controlled Substances and Assessment of Annual Needs for the List I Chemicals Ephedrine, Pseudoephedrine, and Phenylpropanolamine for 2019

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice with request for comments.

SUMMARY: The Drug Enforcement Administration (DEA) proposes to establish the 2019 aggregate production quotas for controlled substances in schedules I and II of the Controlled Substances Act and assessment of annual needs for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine.

DATES: Interested persons may file written comments on this notice in accordance with 21 CFR 1303.11(c) and 1315.11(d). Electronic comments must be submitted, and written comments must be postmarked, on or before September 19, 2018. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after 11:59 p.m. Eastern Time on the last day of the comment period.

Based on comments received in response to this notice, the Administrator may hold a public hearing on one or more issues raised. In the event the Administrator decides in his sole discretion to hold such a hearing, the Administrator will publish a notice of any such hearing in the **Federal Register**. After consideration of any comments or objections, or after a hearing, if one is held, the Administrator will publish in the **Federal Register** a final order establishing the 2019 aggregate production quotas for schedule I and II controlled substances, and an assessment of annual needs for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. DEA–488P'' on all correspondence, including any attachments. The Drug Enforcement Administration encourages that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *http://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon completion of your submission you will receive a Comment Tracking Number for your comment. Please be aware that submitted comments are not instantaneously available for public view on *regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. Paper comments that duplicate electronic submissions are not necessary and are discouraged. Should you wish to mail a paper comment *in lieu* of an electronic comment, it should be sent via regular or express mail to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DRW, 8701 Morrissette Drive, Springfield, Virginia 22152.

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

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received in response to this docket are considered part of the public record. They will, unless reasonable cause is given, be made available by the Drug Enforcement Administration (DEA) for public inspection online at *http://www.regulations.gov.* Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

The Freedom of Information Act (FOIA) applies to all comments received. If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be made publicly available, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also place all the personal identifying information you do not want made publicly available in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be made publicly available, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment.

Comments containing personal identifying information or confidential business information identified and located as directed above will generally be made available in redacted form. If a comment contains so much confidential business information or personal identifying information that it cannot be effectively redacted, all or part of that comment may not be made publicly available. Comments posted to *http://www.regulations.gov* may include any personal identifying information (such as name, address, and phone number) included in the text of your electronic submission that is not identified as directed above as confidential.

An electronic copy of this document is available at *http://www.regulations.gov* for easy reference.

Legal Authority

Section 306 of the Controlled Substances Act (CSA) (21 U.S.C. 826) requires the Attorney General to establish aggregate production quotas for each basic class of controlled substance listed in schedules I and II and for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine. The Attorney General has delegated this function to the Administrator of the DEA pursuant to 28 CFR 0.100.

Analysis for Proposed 2019 Aggregate Production Quotas and Assessment of Annual Needs

The proposed year 2019 aggregate production quotas and assessment of annual needs represent those quantities of schedule I and II controlled substances, and the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine, to be manufactured in the United States in 2019 to provide for the estimated medical, scientific, research, and industrial needs of the United States, lawful export requirements, and the establishment and maintenance of reserve stocks. These quotas include imports of ephedrine, pseudoephedrine, and phenylpropanolamine, but do not include imports of controlled substances for use in industrial processes.

In determining the proposed 2019 aggregate production quotas and assessment of annual needs, the Acting Administrator has taken into account the criteria in 21 U.S.C. 826(a) and factors set forth in 21 CFR 1303.11 (aggregate production quotas for controlled substances) and 21 CFR 1315.11 (assessment of annual needs for ephedrine, pseudoephedrine, and

phenylpropanolamine). The DEA proposes the aggregate production quotas and assessment of annual needs for 2019 by considering: (1) Total net disposal of each class or chemical by all manufacturers and chemical importers during the current and two preceding years; (2) trends in the national rate of net disposal of the class or chemical; (3) total actual (or estimated) inventories of the class or chemical and of all substances manufactured from the class or chemical, and trends in inventory accumulation; (4) projected demand for each class or chemical as indicated by procurement and import quotas requested in accordance with 21 CFR 1303.12, 1315.32, and 1315.34; and (5) other factors affecting medical, scientific, research, and industrial needs of the United States and lawful export requirements, as the Acting Administrator finds relevant. These quotas do not include imports of controlled substances for use in industrial processes.

Other factors the Acting Administrator considered in calculating the aggregate production quotas, but not the assessment of annual needs, include product development requirements of both bulk and finished dosage form manufacturers, and other pertinent information. In determining the proposed 2019 assessment of annual needs, the DEA used the calculation methodology previously described in the 2010 and 2011 assessment of annual needs (74 FR 60294, Nov. 20, 2009, and 75 FR 79407, Dec. 20, 2010, respectively).

On July 16, 2018, DEA published a final rule regarding controlled substances quotas with an effective date of August 15, 2018 (''Controlled Substances Quotas Final Rule''). 83 FR 32784. The Controlled Substances Quotas Final Rule added two factors for DEA to consider when setting aggregate production quotas and assessments of annual needs. These additional factors are: (1) The extent of any diversion of the controlled substance in the class; and (2) relevant information obtained from the Department of Health and Human Services, including from the Food and Drug Administration, the Centers for Disease Control and Prevention, and the Centers for Medicare and Medicaid Services, and relevant information obtained from the states. The proposed aggregate quotas for 2019 in this notice were determined with consideration of the factors in effect prior to the effective date of the Controlled Substances Quotas Final Rule.

The Acting Administrator, therefore, proposes to establish the 2019 aggregate production quotas for certain schedule I and II controlled substances and assessment of annual needs for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine, expressed in grams of anhydrous acid or base, as follows:

Basic class	Proposed 2019 quotas (g)
Schedule I	
1-[1-(2-Thienyl)cyclohexyl]pyrrolidine	20
1-(1-Phenylcyclohexyl)pyrrolidine	15
1-(2-Phenylethyl)-4-phenyl-4-acetoxypiperidine	10
1-(5-Fluoropentyl)-3-(1-naphthoyl)indole (AM2201)	30
1-(5-Fluoropentyl)-3-(2-iodobenzoyl)indole (AM694)	30
1-Benzylpiperazine	25
1-Methyl-4-phenyl-4-propionoxypiperidine	10
1-[1-(2-Thienyl)cyclohexyl]piperidine	15
2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (2C–E)	30
2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (2C–D)	30
2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine (2C–N)	30
2-(2,5-Dimethoxy-4-n-propylphenyl)ethanamine (2C–P)	30
2-(2,5-Dimethoxyphenyl)ethanamine (2C–H)	30
2-(4-Bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25B–NBOMe; 2C–B–NBOMe; 25B; Cimbi-36)	30
2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (2C–C)	30
2-(4-Chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25C–NBOMe; 2C–C–NBOMe; 25C; Cimbi-82)	25
2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (2C–I)	30
2-(4-Iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25I–NBOMe; 2C–I–NBOMe; 25I; Cimbi-5)	30
2,5-Dimethoxy-4-ethylamphetamine (DOET)	25
2,5-Dimethoxy-4-n-propylthiophenethylamine	25
2,5-Dimethoxyamphetamine	25
2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine (2C–T–2)	30
2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine (2C–T–4)	30
3,4,5-Trimethoxyamphetamine	30
3,4-Methylenedioxyamphetamine (MDA)	55
3,4-Methylenedioxymethamphetamine (MDMA)	50
3,4-Methylenedioxy-N-ethylamphetamine (MDEA)	40
3,4-Methylenedioxy-N-methylcathinone (methylone)	40
3,4-Methylenedioxypyrovalerone (MDPV)	35
3–FMC; 3-Fluoro-N-methylcathinone	25
3-Methylfentanyl	30
3-Methylthiofentanyl	30
4-Bromo-2,5-dimethoxyamphetamine (DOB)	30
4-Bromo-2,5-dimethoxyphenethylamine (2–CB)	25
1-(4-Cyanobutyl)-N-(2-phenylpropan-2-yl)-1H-indazole-3-carboximide	25
4-Fluoroisobutyryl fentanyl	30
4–FMC; Flephedrone	25
4–MEC; 4-Methyl-N-ethylcathinone	25
4-Methoxyamphetamine	150
4-Methyl-2,5-dimethoxyamphetamine (DOM)	25

Basic class	Proposed 2019 quotas (g)
4-Methylaminorex	25
4-Methyl-N-methylcathinone (mephedrone)	45
4-Methyl-α-pyrrolidinopropiophenone (4-MePPP)	25
5-(1,1-Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol	50
5-(1,1-Dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (cannabicyclohexanol or CP–47,497 C8-homolog)	40
N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide	25
1-(5-Fluoropentyl)-N-(2-phenylpropan-2-yl)-1H-pyrrolo[2,3-b]pyridine-3carboximide	25
5F–ADB; 5F–MDMB–PINACA (methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate)	30
5F–AMB (methyl 2-(1-(5-fluoropentyl)-1*H*-indazole-3-carboxamido)-3-methylbutanoate)	30
5F–APINACA; 5F–AKB48 (*N*-(adamantan-1-yl)-1-(5-fluoropentyl)-1*H*-indazole-3-carboxamide)	30
5-Fluoro-PB–22; 5F–PB–22	20
5-Fluoro-UR144, XLR11 ([1-(5-fluoro-pentyl)-1*H*indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone	25
5-Methoxy-3,4-methylenedioxyamphetamine	25
5-Methoxy-N,N-diisopropyltryptamine	25
5-Methoxy-N,N-dimethyltryptamine	25
AB–CHMINACA	30
AB–FUBINACA	50
AB–PINACA	30
ADB–FUBINACA (*N*-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamide)	30
Acetyl Fentanyl	100
Acetyl-*alpha*-methylfentanyl	30
Acetyldihydrocodeine	30
Acetylmethadol	2
Acryl Fentanyl	25
ADB–PINACA (*N*-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1*H*-indazole-3-carboxamide)	50
AH–7921	30
Allylprodine	2
Alphacetylmethadol	2
alpha-Ethyltryptamine	25
Alphameprodine	2
Alphamethadol	2
alpha-Methylfentanyl	30
alpha-Methylthiofentanyl	30
alpha-Methyltryptamine (AMT)	25
alpha-Pyrrolidinobutiophenone (α-PBP)	25
alpha-Pyrrolidinopentiophenone (α-PVP)	25
Aminorex	25
Anileridine	20
APINCA, AKB48 (*N*-(1-adamantyl)-1-pentyl-1*H*-indazole-3-carboxamide)	25
Benzylmorphine	30
Betacetylmethadol	2
beta-Hydroxy-3-methylfentanyl	30
beta-Hydroxyfentanyl	30
beta-Hydroxythiofentanyl	30
Betameprodine	2
Betamethadol	4
Betaprodine	2
Bufotenine	3
Butylone	25
Butyryl fentanyl	30
Cathinone	24
Codeine methylbromide	30
Codeine-N-oxide	192
Cyclopropyl Fentanyl	20
Desomorphine	25
Diapromide	20
Diethylthiambutene	20
Diethyltryptamine	25
Difenoxin	8,225
Dihydromorphine	753,500
Dimethyltryptamine	50
Dipipanone	5
Etorphine	30
Fenethylline	30
Fentanyl related substances	25
Furanyl fentanyl	30
gamma-Hydroxybutyric acid	33,417,000
Heroin	45
Hydromorphinol	40
Hydroxypethidine	2
Ibogaine	30

Basic class	Proposed 2019 quotas (g)
Isobutyryl Fentanyl	25
JWH–018 and AM678 (1-Pentyl-3-(1-naphthoyl)indole)	35
JWH–019 (1-Hexyl-3-(1-naphthoyl)indole)	45
JWH–073 (1-Butyl-3-(1-naphthoyl)indole)	45
JWH–081 (1-Pentyl-3-[1-(4-methoxynaphthoyl)]indole)	30
JWH–122 (1-Pentyl-3-(4-methyl-1-naphthoyl)indole)	30
JWH–200 (1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole)	35
JWH–203 (1-Pentyl-3-(2-chlorophenylacetyl)indole)	30
JWH–250 (1-Pentyl-3-(2-methoxyphenylacetyl)indole)	30
JWH–398 (1-Pentyl-3-(4-chloro-1-naphthoyl)indole)	30
Lysergic acid diethylamide (LSD)	40
MAB–CHMINACA; ADB–CHMINACA (*N*-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1*H*-indazole-3-carboxamide)	30
MDMB–CHMICA; MMB–CHMINACA(methyl 2-(1-(cyclohexylmethyl)-1*H*-indole-3-carboxamido)-3,3-dimethylbutanoate)	30
MDMB–FUBINACA (methyl 2-(1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamido)-3,3-dimethylbutanoate)	30
Methyl-2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3-methylbutanoate	25
Marihuana	2,450,000
Mecloqualone	30
Mescaline	25
Methaqualone	60
Methcathinone	25
Methyldesorphine	5
Methyldihydromorphine	2
Morphine methylbromide	5
Morphine methylsulfonate	5
Morphine-N-oxide	150
Naphthalen-1-yl 1-(5-fluorpentyl)-1H-indole-3-carboxylate	25
N,N-Dimethylamphetamine	25
Naphyrone	25
N-Ethyl-1-phenylcyclohexylamine	5
N-Ethyl-3-piperidyl benzilate	10
N-Ethylamphetamine	24
N-Hydroxy-3,4-methylenedioxyamphetamine	24
Noracymethadol	2
Norlevorphanol	55
Normethadone	2
Normorphine	40
Ocfentanil	25
Para-fluorofentanyl	25
Para-flourobutyryl fentanyl	25
Parahexyl	5
PB–22; QUPIC	20
Pentedrone	25
Pentylone	25
Phenomorphan	2
Pholcodine	5
Psilocybin	30
Psilocyn	50
SR–18 and RCS–8 (1-Cyclohexylethyl-3-(2-methoxyphenylacetyl)indole)	45
SR–19 and RCS–4 (1-Pentyl-3-[(4-methoxy)-benzoyl]indole)	30
Tetrahydrocannabinols	384,460
Tetrahydrofuranyl fentanyl	5
Thiofentanyl	25
THJ–2201 ([1-(5-fluoropentyl)-1H-indazol-3-yl](naphthalen-1-yl)methanone)	30
Tilidine	25
Trimeperidine	2
UR–144 (1-pentyl-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone	25
U–47700	30
Valeryl fentanyl	25
Schedule II	
1-Phenylcyclohexylamine	15
1-Piperidinocyclohexanecarbonitrile	25
4-Anilino-N-phenethyl-4-piperidine (ANPP)	1,185,000
Alfentanil	6,200
Alphaprodine	2
Amobarbital	20,100
Amphetamine (for conversion)	12,000,000
Amphetamine (for sale)	42,400,000
Carfentanil	20

Basic class	Proposed 2019 quotas (g)
Cocaine	92,120
Codeine (for conversion)	13,536,000
Codeine (for sale)	40,015,800
Dextropropoxyphene	35
Dihydrocodeine	238,466
Dihydroetorphine	2
Diphenoxylate (for conversion)	14,100
Diphenoxylate (for sale)	770,800
Ecgonine	88,134
Ethylmorphine	30
Etorphine hydrochloride	32
Fentanyl	1,185,000
Glutethimide	2
Hydrocodone (for conversion)	5,000
Hydrocodone (for sale)	44,710,000
Hydromorphone	4,071,000
Isomethadone	30
Levo-alphacetylmethadol (LAAM)	5
Levomethorphan	4,000
Levorphanol	34,000
Lisdexamfetamine	19,000,000
Meperidine	1,580,000
Meperidine Intermediate-A	30
Meperidine Intermediate-B	30
Meperidine Intermediate-C	30
Metazocine	15
Methadone (for sale)	22,278,000
Methadone Intermediate	24,064,000
Methamphetamine	1,446,754
[846,000 grams of levo-desoxyephedrine for use in a non-controlled, non-prescription product; 564,000 grams for methamphetamine mostly for conversion to a schedule III product; and 36,754 grams for methamphetamine (for sale)]	
Methylphenidate	64,600,000
Morphine (for conversion)	4,089,000
Morphine (for sale)	31,456,000
Nabilone	62,000
Noroxymorphone (for conversion)	19,169,340
Noroxymorphone (for sale)	376,000
Opium (powder)	84,600
Opium (tincture)	530,837
Oripavine	28,705,000
Oxycodone (for conversion)	2,081,000
Oxycodone (for sale)	85,578,000
Oxymorphone (for conversion)	24,525,540
Oxymorphone (for sale)	2,880,000
Pentobarbital	25,850,000
Phenazocine	5
Phencyclidine	35
Phenmetrazine	25
Phenylacetone	40
Racemethorphan	5
Racemorphan	5
Remifentanil	3,000
Secobarbital	172,100
Sufentanil	1,880
Tapentadol	18,388,280
Thebaine	84,600,000
List I Chemicals	
Ephedrine (for conversion)	25
Ephedrine (for sale)	4,136,000
Phenylpropanolamine (for conversion)	14,100,000
Phenylpropanolamine (for sale)	7,990,000
Pseudoephedrine (for conversion)	1,000
Pseudoephedrine (for sale)	174,246,000

The Acting Administrator further proposes that aggregate production quotas for all other schedule I and II controlled substances included in 21 CFR 1308.11 and 1308.12 remain at zero. In accordance with 21 CFR 1303.13 and 21 CFR 1315.13, upon consideration of the relevant factors, the Acting Administrator may adjust the 2019 aggregate production quotas and assessment of annual needs as needed.

Conclusion

After consideration of any comments or objections, or after a hearing, if one is held, the Acting Administrator will issue and publish in the **Federal Register** a final order establishing the 2019 aggregate production quotas for controlled substances in schedules I and II and establishing an assessment of annual needs for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine, 21 CFR 1303.11(c) and 1315.11(f).

Dated: August 14, 2018.

Uttam Dhillon,

Acting Administrator.

[FR Doc. 2018–17893 Filed 8–17–18; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

[OMB Number 1103–0093]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Previously Approved Collection; COPS Extension Request Form

AGENCY: Community Oriented Policing Services (COPS) Office, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Community Oriented Policing Services (COPS) Office, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until October 19, 2018.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Lashon M. Hilliard, Policy Analyst, Department of Justice, Community Oriented Policing Services (COPS) Office, 145 N Street NE, Washington, DC 20530 (202–514–6563).

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a currently approved collection, with change; comments requested.

2. *The Title of the Form/Collection:* COPS Extension Request Form.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. U.S. Department of Justice, Community Oriented Policing Services (COPS) Office.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Law enforcement agencies and other COPS grants recipients that have grants expiring within 90 days of the date of the form/request. The extension request form will allow recipients of COPS grants the opportunity to request a ''no-cost'' time extension in order to complete the federal funding period and requirements for their grant/cooperative agreement award. Requesting and/or receiving a time extension *will not* provide additional funding.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that approximately 2,700 respondents annually will complete the form within 30 minutes.

6. *An estimate of the total public burden (in hours) associated with the collection:* 1,350 total annual burden hours (0.5 hours × 2700 respondents + 1,350 total burden hours).

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, Washington, DC 20530.

Dated: August 14, 2018.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2018–17864 Filed 8–17–18; 8:45 am]

BILLING CODE 4410–AT–P

DEPARTMENT OF JUSTICE

[OMB Number 1103–0093]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Previously Approved Collection; COPS Extension Request Form

AGENCY: Community Oriented Policing Services (COPS) Office, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Community Oriented Policing Services (COPS) Office, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until October 19, 2018.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Lashon M. Hilliard, Policy Analyst, Department of Justice, Community Oriented Policing Services (COPS) Office, 145 N Street NE, Washington, DC 20530 (202–514–6563).

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary

for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a currently approved collection, with change; comments requested.
2. *The Title of the Form/Collection:* COPS Extension Request Form.
3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. U.S. Department of Justice, Community Oriented Policing Services (COPS) Office.
4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Law enforcement agencies and other COPS grants recipients that have grants expiring within 90 days of the date of the form/request. The extension request form will allow recipients of COPS grants the opportunity to request a ''no-cost'' time extension in order to complete the federal funding period and requirements for their grant/cooperative agreement award. Requesting and/or receiving a time extension *will not* provide additional funding.
5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that approximately 2,700 respondents annually will complete the form within 30 minutes.
6. *An estimate of the total public burden (in hours) associated with the collection:* 1,350 total annual burden hours (0.5 hours × 2700 respondents + 1,350 total burden hours).

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, Washington, DC 20530.

Dated: August 15, 2018.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2018–17865 Filed 8–17–18; 8:45 am]

BILLING CODE 4410–AT–P

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Richard M. Osborne, Sr., et al.,* Case No. 1:11–cv–2039–CAB, was lodged with the United States District Court for the Northern District of Ohio on August 10, 2018.

This proposed Consent Decree concerns a complaint filed by the United States against Defendants Richard M. Osborne, Sr., Great Plains Exploration, LLC, Center Street Investments, Inc., Callendar Real Estate Development Company, LLC, and Osair, Inc., pursuant to Sections 301(a), 309(b), and 309(d) of the Clean Water Act, 33 U.S.C. §§ 1311(a), 1319(b), and 1319(d), to obtain injunctive relief from and impose civil penalties against the Defendants for violating the Clean Water Act by discharging pollutants without a permit into waters of the United States. The proposed Consent Decree resolves these allegations by requiring the Defendants to restore the impacted areas and pay a civil penalty.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to Phillip R. Dupré, United State Department of Justice, Environment and Natural Resources Division, Post Office Box 7611, Washington, DC 20044–7611 and refer to *United States* v. *Richard M. Osborne, Sr., et al.,* Case No. 1:11–cv–2039–CAB, DJ #90–5–1–1–18628.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the Northern District of Ohio, Carl B. Stokes United States Courthouse, 801 West Superior Avenue, Cleveland, OH 44113. In addition, the proposed Consent Decree may be examined electronically at *http://www.justice.gov/enrd/Consent_Decrees.html.*

Cherie L. Rogers,

Assistant Section Chief, Environmental Defense Section, Environment and Natural Resources Division.

[FR Doc. 2018–17846 Filed 8–17–18; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification of Application of Existing Mandatory Safety Standard

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by the party listed below.

DATES: All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before September 19, 2018.

ADDRESSES: You may submit your comments, identified by ''docket number'' on the subject line, by any of the following methods:

1. *Email: zzMSHA-comments@dol.gov.* Include the docket number of the petition in the subject line of the message.
2. *Facsimile:* 202–693–9441.
3. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452, Attention: Sheila McConnell, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk in Suite 4E401. Individuals may inspect a copy of the petition and comments during normal business hours at the address listed above.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments.

FOR FURTHER INFORMATION CONTACT: Barbara Barron, Office of Standards, Regulations, and Variances at 202–693–9447 (voice), *barron.barbara@dol.gov* (email), or 202–693–9441 (fax). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations Part 44

govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor (Secretary) determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. That the application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

II. Petition for Modification

Docket Number: M–2018–006–M.

Petitioner: U.S. Silica Company, 838 VFW Drive, Festus, Missouri 63028.

Mines: Festus Plant, MSHA I.D. No. 23–02377, located in Jefferson County, Missouri.

Regulation Affected: 30 CFR 56.13020 (Use of compressed air).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method using a Clothes Cleaning Process that removes dust from a miner's clothing.

The petitioner states that:

(1) The proposed alternative method has been developed jointly between UniminCorporation and the National Institute for Occupational Safety and Health (NIOSH and successfully tested by NIOSH to reduce a miner's exposure to respirable dust, thus reducing the miner's health risks. The system consists of four major components: a cleaning booth, an air spray manifold, an air reservoir, and an exhaust ventilation system.

(2) Only miners trained in the operation of the cleaning booth will be permitted to use the booth to clean their clothes.

(3) Petitioner will incorporate the Clothes Cleaning Process and manufacturer's instruction manuals into their MSHA Part 48b training plan and train affected miners in the process.

(4) Miners entering the booth will examine valves and nozzles for damage or malfunction and will close the door fully before opening the air valve. Any defects will be repaired prior to the booth being used.

(5) Miners entering the booth will wear eye protection, ear plugs or muffs for hearing protection, and respiratory protection. Respiratory protection will consist of a full-face or half-mask respirator that meets or exceeds the minimum requirements of a N95 filter to which the miner has been fit-tested. As an alternative, the use of a full-face respirator will meet the requirements for eye protection. A sign will be conspicuously posted requiring the above personal protective equipment when the booth is entered.

(6) Air flow through the booth will be at least 2,000 cubic feet per minute to maintain negative pressure during use of the cleaning system in order to prevent contamination of the environment outside the booth. Airflow will be in a downward direction, thereby moving contaminants away from the miner's breathing zone.

(7) Air pressure through the spray manifold will be limited to 30 pounds per square inch or less. A lock box with a single, plant manager controlled key will be used to prevent regulator tampering.

(8) The air spray manifold will consist of schedule 80 steel pipe that has a failure pressure of 1,300 pounds per square inch and will be capped at the base and actuated by an electrically controlled ball valve at the top.

(9) Air nozzles must not exceed 30 pound(s) per square inch gauge.

(10) The upper most spray of the spray manifold will be located below the booth users breathing zone. Some type of mechanical device can be used to cover the upper air nozzles to meet the specific height of the user.

(11) Air nozzles will be guarded to eliminate the possibility of incidental contact, which could create mechanical damage to the air nozzles during the clothes cleaning process.

(12) Petitioner will conduct periodic maintenance checks of the booth in accordance with the recommendations contained in the manufacture's instruction manual.

(13) The air reservoir tank supplying air to the manifold system will be of sufficient volume to permit no less than 20 seconds of continuous cleaning time.

(14) An appropriate hazard warning sign will be posted on the booth to state at a minimum, ''Compressed Air'' and ''Respirable Dust''.

(15) A pressure relief valve designed for the booth's air reservoir will be installed.

(16) The mine will exhaust dust-laden air from the booth into a local exhaust ventilation system or duct outside the facility while ensuring there is no re-entrainment back into the structure.

The petitioner asserts that proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the standard.

Sheila McConnell,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2018–17886 Filed 8–17–18; 8:45 am]

BILLING CODE 4520–43–P

NATIONAL SCIENCE FOUNDATION

Security From a Wireless Spectrum Perspective: Technology Innovation and Policy Research Needs

AGENCY: The Networking and Information Technology Research and Development (NITRD) National Coordination Office (NCO), National Science Foundation.

ACTION: Notice of meeting.

SUMMARY: This workshop will focus on the R&D challenges of securing the wireless spectrum access medium to assure spectrum availability, reliability and performance over wireless links. Representatives from Federal agencies, academia and the private sector will discuss the current technologies, tools and practices that are effective, and identify the gaps and issues that will require additional research.

DATES: September 13, 2018.

FOR FURTHER INFORMATION CONTACT: Wendy Wigen at (202) 459–9683 or *wigen@nitrd.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Overview: This notice is issued by the National Coordination Office for the Networking and Information Technology Research and Development (NITRD) Program. Agencies of the Wireless Spectrum R&D Interagency Working Group are conducting a workshop focused on security from a wireless spectrum perspective. Experts from government, private industry, and academia will help discuss the current technology, tools and practices that are effective, and identify gaps and issues that will require additional research to resolve. The workshop will take place on September 13 from 9:00 a.m. to 5:00 p.m. ET at the NITRD office, 490 L'Enfant Plaza SW, Suite 8001 (8th Floor), Washington, DC 20024. Participation is by invitation only but observers are welcome on a first come first served basis. This event will be webcast. The agenda and information

about how to join the webcast will be available the week of the event at: *https://www.nitrd.gov/nitrdgroups/index.php?title=WSRD-Workshop-X.*

Workshop Goals: WSRD members will use information gathered from this workshop to develop recommendations on the government role in these technologies, as well as for their agency-specific research agendas.

Workshop Objectives: 1. Identify wireless security scenarios and issues in the context of increasingly congested and contested spectrum, and the emerging spectrum sharing and trading frameworks. 2. Discuss the ongoing technology innovations and the related short- and long-term regulatory frameworks. 3. Identify innovative tools, techniques, and experimentation for future research.

Submitted by the National Science Foundation in support of the Networking and Information Technology Research and Development (NITRD) National Coordination Office (NCO) on August 14, 2018.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2018–17845 Filed 8–17–18; 8:45 am]

BILLING CODE 7555–01–P

PENSION BENEFIT GUARANTY CORPORATION

Proposed Submission of Information Collection for OMB Review; Comment Request; Annual Reporting (Form 5500 Series)

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of intent to request extension of OMB approval, with modifications.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) intends to request that the Office of Management and Budget (OMB) extend approval (with modifications), under the Paperwork Reduction Act of 1995, of its collection of information for Annual Reporting under OMB control number 1212–0057, which expires on March 31, 2021. This notice informs the public of PBGC's intent and solicits public comment on the collection of information.

DATES: Comments must be submitted by October 19, 2018.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Email: paperwork.comments@pbgc.gov.* Refer to Annual Reporting (Form 5500 Series) in the subject line.
- *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 received must include the agency's name (Pension Benefit Guaranty Corporation, or PBGC) and refer to the Annual Reporting (Form 5500 Series). All comments received will be posted without change to PBGC's website, *www.pbgc.gov,* including any personal information provided. Copies of the collection of information may 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: Karen Levin (*levin.karen@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 3559. TTY users may call the Federal relay service toll-free at 800–877–8339 and ask to be connected to 202–326–4400, extension 3559.

SUPPLEMENTARY INFORMATION: Annual reporting to the Internal Revenue Service (IRS), the Employee Benefits Security Administration (EBSA), and the Pension Benefit Guaranty Corporation (PBGC) is required by law for most employee benefit plans. For example, section 4065 of the Employee Retirement Income Security Act of 1974 requires annual reporting to PBGC for pension plans covered by title IV of ERISA. To accommodate these filing requirements, PBGC, IRS, and EBSA have jointly promulgated the Form 5500 Series, which includes the Form 5500 Annual Return/Report of Employee Benefit Plan and the Form 5500–SF Short Form Annual Return/Report of Small Employee Benefit Plan.

The collection of information has been approved by OMB under control number 1212–0057 through March 31, 2021. PBGC intends to request that OMB extend its approval, with modifications, for three years. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

PBGC is proposing modifications to the 2019 Schedule R (Retirement Plan Information), Form 5500–SF, and Schedule SB (Single-Employer Defined Benefit Plan Actuarial Information), and their related instructions. These proposed modifications affect some, but not all, single-employer defined benefit plans covered by Title IV of ERISA. PBGC also is proposing minor modifications to the Form 5500 Series to improve the accuracy of reported information.

PBGC is proposing to modify Schedule R to obtain information from single-employer plans related to unpaid minimum required contributions. Single-employer plans are required to report the amount of unpaid minimum required contributions on Schedule SB and, in most cases, report additional information about the unpaid (''missed'') contributions to PBGC on the applicable PBGC form (*i.e.,* Form 10 or Form 200). In some cases, this PBGC reporting requirement is waived (*e.g.,* if the contribution is made within 30 days of the due date). PBGC has found a significant number of plans that are required to file these PBGC form(s) do not. As part of its enforcement effort, PBGC regularly contacts plans that report unpaid contributions on Schedule SB if the applicable PBGC form is not received. With limited exception, PBGC cannot distinguish between plans that were required to report missed contributions and those that qualified for a regulatory waiver, and as a result, PBGC ends up contacting many plans for which reporting was waived. PBGC is proposing to modify Schedule R by requiring PBGC-insured single-employer plans that report unpaid minimum required contributions on Schedule SB to check a box indicating whether PBGC reporting of the missed contributions was waived or required (and if required, whether such reporting requirement has been satisfied). PBGC is proposing this addition of information to enable PBGC to limit its contact to plans that were required, but failed to, report information about unpaid contributions to PBGC.

Because many small PBGC-insured plans are not required to complete Schedule R (*i.e.,* plans that file Form 5500–SF), PBGC also is proposing to add a similar question about missed contributions to Form 5500–SF.

With regard to the Schedule SB form and instructions, PBGC is proposing to modify line 23 to eliminate three boxes representing mortality tables that are no longer applicable.

PBGC estimates that it will receive approximately 23,900 Form 5500 and

Form 5500–SF filings per year under this collection of information. PBGC further estimates that the total annual burden of this collection of information attributable to PBGC will be 1,200 hours and $1,531,000.

PBGC is soliciting public comments to—

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodologies and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Issued in Washington, DC, by

Hilary Duke,

Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation.

[FR Doc. 2018–17850 Filed 8–17–18; 8:45 am]

BILLING CODE 7709–02–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2017–233; CP2017–239; MC2018–206 and CP2018–288]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* August 22, 2018.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

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

SUPPLEMENTARY INFORMATION:

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I. Introduction
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 3007.301.[1]

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).:* CP2017–233; *Filing Title:* Notice of the United States Postal Service of Filing Modification Two to a Global Plus 1D Negotiated Service Agreement; *Filing Acceptance Date:* August 14, 2018; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Christopher C. Mohr; *Comments Due:* August 22, 2018.

2. *Docket No(s).:* CP2017–239; *Filing Title:* Notice of the United States Postal Service of Filing Modification Two to a Global Plus 1D Negotiated Service Agreement; *Filing Acceptance Date:* August 14, 2018; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Christopher C. Mohr; *Comments Due:* August 22, 2018.

3. *Docket No(s).:* MC2018–206 and CP2018–288; *Filing Title:* USPS Request to Add Priority Mail Contract 462 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* August 14, 2018; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Curtis E. Kidd; *Comments Due:* August 22, 2018.

This Notice will be published in the **Federal Register**.

Stacy L. Ruble,

Secretary.

[FR Doc. 2018–17863 Filed 8–17–18; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

POSTAL REGULATORY COMMISSION

[Docket No. CP2018–286; Order No. 4758]

Inbound Parcel Post (at UPU Rates)

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is acknowledging a recent filing by the Postal Service of its intention to change prices not of general applicability to be effective January 1, 2019. This document informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* August 21, 2018.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

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

SUPPLEMENTARY INFORMATION:

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I. Introduction

II. Contents of Filing
III. Commission Action
IV. Ordering Paragraphs

I. Introduction

On August 13, 2018, the Postal Service filed notice announcing its intention to change prices not of general applicability for a certain portion of its Inbound Parcel Post (at Universal Postal Union (UPU) Rates) product effective January 1, 2019.[1]

II. Contents of Filing

In its Notice, the Postal Service proposes new prices for the UPU e-commerce delivery option (ECOMPRO). Notice at 2. ECOMPRO allows designated postal operators of UPU member countries, including the Postal Service, to mutually consent to certain delivery options pursuant to UPU regulations for air parcel exchanges.[2] To support its proposed ECOMPRO prices, the Postal Service filed a redacted version of the proposed prices; a copy of the certification required under 39 CFR 3015.5(c)(2); and redacted copies of Governors' Decisions 14–04 and 11–6. Notice at 4; *see id.* Attachments 2–5. The Postal Service also filed redacted financial workpapers. Notice at 4.

Additionally, the Postal Service filed unredacted copies of Governors' Decisions 14–04 and 11–6, an unredacted copy of the new prices, and related financial information under seal. *See id.* at 4. The Postal Service filed an application for non-public treatment of materials filed under seal. Notice, Attachment 1.

III. Commission Action

The Commission establishes Docket No. CP2018–286 for consideration of matters raised by the Notice and appoints Katalin K. Clendenin to serve as Public Representative in this docket.

The Commission invites comments on whether the Postal Service's filing is consistent with 39 U.S.C. 3632, 3633, and 39 CFR part 3015. Comments are due no later than August 21, 2018. The public portions of the filing 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 3007.301.[3]

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2018–286 for consideration of the matters raised by the Postal Service's Notice.
2. Pursuant to 39 U.S.C. 505, Katalin K. Clendenin is appointed to serve as an officer of the Commission to represent the interests of the general public in this proceeding (Public Representative).
3. Comments are due no later than August 21, 2018.
4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2018–17811 Filed 8–17–18; 8:45 am]

BILLING CODE 7710–FW–P

[1] Notice of the United States Postal Service of Filing Changes in Rates Not of General Applicability for Certain Inbound Parcel Post (at UPU Rates), and Application for Non-Public Treatment, August 13, 2018, at 1 (Notice).

[2] Docket No. CP2017–267, Order Approving Changes in Prices Not of General Applicability for Certain Inbound Parcel Post (at UPU Rates), August 28, 2017, at 3 (Order No. 4070).

[3] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

POSTAL REGULATORY COMMISSION

[Docket No. CP2018–287; Order No. 4759]

Inbound EMS 2

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is acknowledging a recent Postal Service filing of its intention to change prices not of general applicability to be effective January 1, 2019. This document informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* August 21, 2018.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

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

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Contents of Filing
III. Commission Action
IV. Ordering Paragraphs

I. Introduction

On August 13, 2018, the Postal Service filed notice pursuant to 39 CFR 3015.5, announcing its intention to change rates not of general applicability for Inbound EMS 2 effective January 1, 2019.[1]

II. Contents of Filing

To support its proposed Inbound EMS 2 prices, the Postal Service filed a redacted version of the proposed prices; a copy of the certification required under 39 CFR 3015.5(c)(2); a redacted copy of Governors' Decision No. 11–6; a redacted copy of the annual EMS Pay-for-Performance (PfP) Plan for 2018; and redacted copies of the EMS Cooperative Report Cards for Calendar Year (CY) 2017 and for the first two quarters of CY 2018. Notice at 2–3, *see id.* Attachments 2–6.

The Postal Service also filed unredacted copies of Governors' Decision No. 11–6, proposed prices, service performance data, and related financial information under seal. Notice at 2. The Postal Service filed an application for non-public treatment of materials filed under seal. Notice, Attachment 1.

III. Commission Action

The Commission establishes Docket No. CP2018–287 for consideration of matters raised by the Notice and appoints Katalin K. Clendenin to serve as Public Representative in this docket.

The Commission invites comments on whether the Postal Service's filing is consistent with 39 U.S.C. 3632, 3633, and 39 CFR part 3015. Comments are due no later than August 21, 2018. The public portions of the filing 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 3007.301.[2]

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2018–287 for consideration of the matters raised by the Postal Service's Notice.
2. Pursuant to 39 U.S.C. 505, Katalin K. Clendenin is appointed to serve as an officer of the Commission to represent

[1] Notice of the United States Postal Service of Filing Changes in Rates Not of General Applicability for Inbound EMS 2, and Application for Non-Public Treatment, August 13, 2018, at 1 (Notice).

[2] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

the interests of the general public in this proceeding (Public Representative).

3. Comments are due no later than August 21, 2018.

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

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2018–17810 Filed 8–17–18; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* August 20, 2018.

FOR FURTHER INFORMATION CONTACT: Elizabeth Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 14, 2018, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 462 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2018–206, CP2018–288.

Elizabeth Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2018–17814 Filed 8–17–18; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83846; File No. SR–CboeEDGX–2018–032]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for Use on the Exchange's Equity Options Platform

August 14, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 8, 2018, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the fee schedule applicable to Members[5] and non-Members of the Exchange pursuant to EDGX Rules 15.1(a) and (c).

The text of the proposed rule change is available at the Exchange's website at *www.markets.cboe.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its fee schedule for its equity options platform (''EDGX Options'') to (i) reduce the standard rebates for Complex Orders, Customer (contra Non-Customer) in Penny Pilot (''Penny'') and Non-Penny Pilot (''Non-Penny'') Securities; (ii) increase the standard rates for Market-Maker orders that remove liquidity in Penny and Non-Penny Securities; (iii) increase the standard rate for BAM Contra orders; (iv) amend the Customer Volume Tiers; (v) amend the Complex Customer Penny Tiers; (vi) amend the Complex Customer Non-Penny Tiers; and (vii) and eliminate the Complex Market-Maker Penny and Non-Penny Tiers.[6]

Complex Order, Customer (Contra Non-Customer) Penny and Non-Penny Rebates

Currently, the Exchange applies fee code ZA to Customer complex orders that are executed on the complex order book (''COB'') with a non-Customer[7] as the contra-party in Penny Securities and provides such orders a rebate of $0.47 per contract. The Exchange also currently applies fee code ZB to Customer complex orders that are executed on the COB with a non-Customer as the contra-party in Non-Penny Securities and provides such orders a rebate of $0.97 per contract. The Exchange proposes to reduce the rebates for these orders. Particularly, the Exchange proposes to reduce the rebate for Customer complex orders with a non-Customer as the contra party in Penny Securities from $0.47 per contract to $0.45 per contract. The Exchange proposes to reduce the rebate for Customer complex orders with a non-Customer as the contra party in Non-Penny Securities from $0.97 per contract to $0.80 per contract.

Market Maker Remove Rate, Penny and Non-Penny

By way of background, fee codes PT and NT are currently appended to all Market Maker orders in Penny Securities and Non-Penny Securities, respectively, that remove liquidity, and result in a standard fee of $0.19 per contract. The Exchange proposes to increase the standard fee of $0.19 per contract for Market Maker orders in Penny and Non-Penny Securities that remove liquidity to $0.23 per contract. The Exchange notes that this increase is in line with the amounts assessed by other exchanges for similar transactions.[8]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] The term ''Member'' is defined as ''any registered broker or dealer that has been admitted to membership in the Exchange.'' *See* Exchange Rule 1.5(n).

[6] The Exchange initially filed the proposed fee changes on August 1, 2018 (SR–CboeEDGX–2018–026) for August 1, 2018 effectiveness. On business date August 8, 2018, the Exchange withdrew that filing and submitted this filing.

[7] ''Non-Customer'' applies to any transaction that is not a Customer order. *See* EDGX Options Exchange Fee Schedule.

[8] *See e.g.,* Nasdaq PHLX LLC Pricing Schedule, Section II, Multiply Listed Options Fees. *See also*

Continued

BAM Contra Rate

Fee code BB is currently appended to all Bats Auction Mechanism (''BAM'') Contra Orders [9] executed in a BAM auction and is currently assessed $0.04 per contract. The Exchange proposes to increase the rate from $0.04 per contract to $0.05 per contract. The Exchange notes that the proposed rate is still in line with relevant rates related to price improvement auctions offered by other options exchanges.[10]

Customer Volume Tiers

By way of background, fee codes PC and NC are currently appended to all Customer orders in Penny Securities and Non-Penny Securities, respectively, and result in a standard rebate of $0.01 per contract. The Customer Volume Tiers in footnote 1 consist of four separate tiers, each providing an enhanced rebate to a Member's Customer orders that yield fee codes PC or NC upon satisfying monthly volume criteria required by the respective tier. The Exchange proposes to amend the volume criteria in Customer Volume Tiers 1–4. Particularly, Customer Volume Tier 1 provides an enhanced rebate of $0.10 per contract where a Member has an ADV [11] in Customer orders greater than or equal to 0.20% of average OCV. The Exchange proposes to increase the ADV requirement from 0.20% of average OCV [12] to 0.35% of average OCV. Customer Volume Tier 2 provides an enhanced rebate of $0.16 per contract where a Member has an ADV in Customer orders greater than or equal to 0.40% of average OCV. The Exchange proposes to increase the ADV requirement of Customer Volume Tier 2 from 0.40% of average OCV to 0.45% of average OCV. Customer Volume Tier 3 provides an enhanced rebate of $0.21 per contract where a Member has an ADV in Customer orders greater than or equal to 0.65% of average OCV. The Exchange proposes to increase the ADV requirement of Customer Volume Tier 3 from 0.65% of average OCV to 0.75% of average OCV. Lastly, Customer Volume Tier 4 provides an enhanced rebate of $0.21 per contract where a Member (i) has an ADV in Customer orders greater than or equal to 0.30% of average OCV and (ii) has an ADV in Customer or Market Maker orders greater than or equal to 0.50% of average OCV. The Exchange proposes to increase the ADV requirements in both prongs from 0.30% of average OCV to 0.60% of average OCV in the first prong and from 0.50% of average OCV to 1.00% of average OCV in the second prong. The Exchange lastly proposes to reduce the enhanced rebate in Customer Tier Volume 2 from $0.16 per contract to $0.13 per contract.

Complex Customer Penny Rebates and Tiers

As noted above, fee code ZA is currently appended to all Customer complex orders executed on the COB with a non-Customer as the contra-party in Penny Securities and currently results in a standard rebate of $0.47 per contract (as discussed above however, the Exchange is proposing to reduce the standard rebate for these orders to $0.45 per contract). The Complex Customer Tiers for Penny Securities in footnote 1 consist of three separate tiers, each providing an enhanced rebate to a Member's Customer orders that yield fee code ZA upon satisfying monthly volume criteria required by the respective tier. The Exchange proposes to amend the volume criteria thresholds in Complex Customer Penny Tiers 1–3. Particularly, Complex Customer Penny Tier 1 currently provides an enhanced rebate of $0.48 per contract where a Member has an ADV in Customer orders greater than or equal to 0.30% of average OCV. The Exchange proposes to increase the ADV requirement from 0.30% of average OCV to 0.40% of average OCV. Complex Customer Penny Tier 2 currently provides an enhanced rebate of $0.49 per contract where a Member has an ADV in Customer orders greater than or equal to 0.40% of average OCV. The Exchange proposes to increase the ADV requirement of Complex Customer Penny Tier 2 from 0.40% of average OCV to 0.55% of average OCV. Complex Customer Penny Tier 3 currently provides an enhanced rebate of $0.50 per contract where a Member has an ADV in Customer orders greater than or equal to 0.65% of average OCV. The Exchange proposes to increase the ADV requirement of Complex Customer Penny Tier 3 from 0.65% of average OCV to 0.75% of average OCV.

The Exchange also proposes to amend the enhanced rebates in each of the Complex Customer Penny Tiers. Particularly, the Exchange proposes to reduce the rates as follows: In Complex Customer Penny Tier 1, reduce the rebate from $0.48 per contract to $0.47 per contract; in Complex Customer Penny Tier 2, reduce the rebate from $0.49 per contract to $0.48 per contract; and in Complex Customer Penny Tier 3, reduce the rebate from $0.50 per contract to $0.49 per contract.

Complex Customer Non-Penny Rebates and Tiers

As noted above, fee code ZB is currently appended to all Customer complex orders executed on the COB with a non-Customer as the contra-party in Non-Penny Securities and currently results in a standard rebate of $0.97 per contract (as discussed above however, the Exchange is proposing to reduce the standard rebate for these orders to $0.80 per contract). The Complex Customer Tiers for Non-Penny Securities in footnote 1 consist of three separate tiers, each providing an enhanced rebate to a Member's Customer orders that yield fee code ZB upon satisfying monthly volume criteria required by the respective tier. The Exchange proposes to amend the volume criteria thresholds in Complex Customer Non-Penny Tiers 1–3. Particularly, Complex Customer Non-Penny Tier 1 currently provides an enhanced rebate of $0.98 per contract where a Member has an ADV in Customer orders greater than or equal to 0.30% of average OCV. The Exchange proposes to increase the ADV requirement from 0.30% of average OCV to 0.40% of average OCV. Complex Customer Non-Penny Tier 2 currently provides an enhanced rebate of $0.99 per contract where a Member has an ADV in Customer orders greater than or equal to 0.40% of average OCV. The Exchange proposes to increase the ADV requirement of Complex Customer Non-Penny Tier 2 from 0.40% of average OCV to 0.55% of average OCV. Complex Customer Non-Penny Tier 3 currently provides an enhanced rebate of $1.00 per contract where a Member has an ADV in Customer orders greater than or equal to 0.65% of average OCV. The Exchange proposes to increase the ADV requirement of Complex Customer Non-Penny Tier 3 from 0.65% of average OCV to 0.75% of average OCV.

The Exchange also proposes to reduce the enhanced rebates in each of the Complex Customer Non-Penny Tiers. Particularly, the Exchange proposes to reduce the rates as follows: In Complex

NYSE Arca Options Fees and Charges, NYSE Arca Options: Trade-Related Charges for Standard Options, Transaction Fee for Electronic Executions—Per Contract.

[9] ''BAM Contra Order'' or ''Initiating Order'' is an order submitted by a Member entering a BAM Agency Order for execution within BAM that will potentially execute against the BAM Agency Order pursuant to Rule 21.19. *See* EDGX Options Exchange Fee Schedule.

[10] *See e.g.,* Miami International Securities Exchange, LLC (''MIAX'') Fee Schedule, MIAX Price Improvement Mechanism (''PRIME'') Fees.

[11] ''ADV'' means average daily volume calculated as the number of contracts added or removed, combined, per day. ADV is calculated on a monthly basis. *See* EDGX Options Exchange Fee Schedule.

[12] ''OCV'' means the total equity and ETF options volume that clears in the Customer range at the Options Clearing Corporation (''OCC'') for the month for which the fees apply, excluding volume on any day that the Exchange experiences an Exchange System Disruption and on any day with a scheduled early market close *See* EDGX Options Exchange Fee Schedule.

Customer Non-Penny Tier 1, reduce the rebate from $0.98 per contract to $0.85 per contract; in Complex Customer Non-Penny Tier 2, reduce the rebate from $0.99 per contract to $0.87 per contract; and in Complex Customer Non-Penny Tier 3, reduce the standard rebate from $1.00 per contract to $0.95 per contract.

Complex Market Maker Penny and Non-Penny Tiers

By way of background, fee codes ZM and ZN are currently appended to all complex Market Maker orders in Penny Securities and Non-Penny Securities, respectively that add liquidity, and result in a standard fee of $0.50 and $1.10 per contract, respectively. The Complex Market Maker Volume Tiers for Penny and Non-Penny Securities under footnote 2 consist of one tier for each program respectively, each providing a reduced rate to a Member's Market Makers orders that yield fee code ZM and ZN upon satisfying monthly volume criteria required by the respective tier. The Exchange no longer wishes to maintain these particular programs. Accordingly, the Exchange proposes to eliminate both Complex Market Maker Penny Tier 1 and Complex Market Maker Non-Penny Tier 1.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.[13] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[14] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls.

First, the Exchange believes that it is reasonable to reduce the rebates for Customer complex orders that interact with non-Customer orders on the COB in both Penny and Non-Penny Securities, because these Customer complex orders still receive a rebate (albeit a lesser rebate than before) and because the Exchange believes these rebates will continue to encourage participation on the COB by entry of Customer orders to the Exchange. The Exchange believes the proposed changes are equitable and not unfairly discriminatory because they apply uniformly to all Customers. The Exchange notes rebates for Customer complex orders are designed to encourage Customer orders entered into the Exchange, which orders benefit all market participants by providing additional trading opportunities. This attracts liquidity providers and an increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow originating from other market participants.

Next, the Exchange believes the proposal to increase the standard fee of $0.19 per contract to $0.23 per contract for Market Maker orders in Penny and Non-Penny Securities that remove liquidity is reasonable because the proposed amount is still in line with the amounts assessed by other exchanges for similar transactions.[15] The Exchange believes the proposed changes are equitable and not unfairly discriminatory because they apply uniformly to all Market Makers.

The Exchange believes the proposed increase to the BAM contra rate is reasonable because it is a slight increase and because it is still in line with what other exchanges assess for similar transactions.[16] Additionally the proposed rate change applies to all market participants uniformly.

The Exchange next notes that volume-based discounts such as those currently maintained on the Exchange have been widely adopted by options exchanges and are equitable because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to (i) the value of an exchange's market quality; (ii) associated with higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns; and (iii) introduction of higher volumes of orders into the price and volume discovery processes. While the proposed modifications to the existing (i) Customer Volume Tiers and (ii) Complex Customer Tiers in Penny and Non-Penny Securities, make such tiers more difficult to attain, each is intended to incentivize Members to send additional Customer orders (and/or Market Maker orders in the case of Customer Volume Tier 4) to the Exchange in an effort to qualify or continue to qualify for the enhanced rebates made available by the tiers. The Exchange notes that increased volume on the Exchange provides greater trading opportunities for all market participants. The Exchange believes the proposed changes are equitable and nondiscriminatory because the proposed changes apply uniformly to all Customers.

With respect to the proposal to reduce rebates under (i) Customer Volume Tier 2, (ii) Complex Customer Penny Tiers 1, 2, and 3, and (iii) Complex Customer Non-Penny Tiers 1, 2, and 3, the Exchange believes the proposed changes are reasonable because Customers still have the opportunity to receive enhanced rebates (albeit lesser amounts than before). The Exchange believes the rebates still provide an incremental incentive for Customers to strive for higher tier levels, which provides increasingly higher rebates. The Exchange believes the proposed changes are equitable and nondiscriminatory because the proposed changes apply uniformly to all Customers.

The Exchange believes that the proposal to eliminate the Complex Market Maker Penny Tier 1 and Complex Market Maker Non-Penny Tier 1 is reasonable, fair, and equitable because the Exchange no longer desires to maintain such discounts and notes that it is not required to provide such discounts. The Exchange believes it's equitable and not unfairly discriminatory because it applies uniformly to all Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed amendments to its fee schedule would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed changes represent a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed change will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The

[13] 15 U.S.C. 78f.

[14] 15 U.S.C. 78f(b)(4).

[15] *See e.g.,* Nasdaq PHLX LLC Pricing Schedule, Section II, Multiply Listed Options Fees. *See also* NYSE Arca Options Fees and Charges, NYSE Arca Options: Trade-Related Charges for Standard Options, Transaction Fee for Electronic Executions—Per Contract.

[16] *See e.g.,* Miami International Securities Exchange, LLC (''MIAX'') Fee Schedule, MIAX Price Improvement Mechanism (''PRIME'') Fees.

Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [17] and paragraph (f) of Rule 19b–4 thereunder.[18] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeEDGX–2018–032 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–CboeEDGX–2018–032. 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–CboeEDGX–2018–032 and should be submitted on or before September 10, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2018–17833 Filed 8–17–18; 8:45 am]

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[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83844; File No. SR–NYSEArca–2018–40]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change Regarding Investments of the REX BKCM ETF

August 14, 2018.

On June 26, 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 relating to investments of the REX BKCM ETF. The proposed rule change was published for comment in the **Federal Register** on July 3, 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 October 1, 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–2018–40).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2018–17831 Filed 8–17–18; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 83546 (June 28, 2018), 83 FR 31214 (July 3, 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. 34–83847; File No. SR–MIAX–2018–23]

Self-Regulatory Organizations: Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by Miami International Securities Exchange LLC To Amend Its Fee Schedule

August 14, 2018.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 7, 2018, Miami International Securities Exchange LLC (''MIAX Options'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Options Fee Schedule (the ''Fee Schedule'').

The text of the proposed rule change is available on the Exchange's website at

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

http://www.miaxoptions.com/rule-filings, at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to modify certain aspects of the following fees that apply to MIAX Options Market Makers: [3] (i) The Monthly Trading Permit fees; and (ii) the MEI Port fees. The Exchange also proposes to amend the list of MIAX Select Symbols [4] contained in the Priority Customer Rebate Program [5] of the Exchange's Fee Schedule to delete an obsolete reference.

The Exchange issues Trading Permits that confer the ability to transact on the Exchange.[6] Currently, the Exchange assesses the following monthly fees for MIAX Options Market Maker Trading Permits: (i) $7,000 for Market Maker Assignments in up to 10 option classes or up to 20% of option classes by volume; (ii) $12,000 for Market Maker Assignments in up to 40 option classes or up to 35% of option classes by volume; (iii) $17,000 for Market Maker Assignments in up to 100 option classes or up to 50% of option classes by volume; and (iv) $22,000.00 for Market Maker Assignments in over 100 option classes or over 50% of option classes by volume up to all option classes listed on MIAX Options.[7] For the calculation of these monthly Trading Permit fees, the number of classes is defined as the greatest number of classes the Market Maker was assigned to quote in on any given day within the calendar month and the class volume percentage is based on the total national average daily volume in classes listed on MIAX Options in the prior calendar quarter.[8] Newly listed option classes are excluded from the calculation of the monthly Market Maker Trading Permit fee until the calendar quarter following their listing, at which time the newly listed option classes will be included in both the per class count and the percentage of total national average daily volume.

The Exchange assesses Market Makers the monthly Trading Permit fee based on the greatest number of classes listed on MIAX Options that the Market Maker was assigned to quote on any given day within a calendar month and the applicable fee rate that is the lesser of either the per class basis or percentage of total national average daily volume measurement. Members receiving Trading Permits during the month will be assessed Trading Permit fees according to this schedule, except that the calculation of the Trading Permit fee for the first month in which the Trading Permit is issued will be pro-rated based on the number of trading days occurring after the date on which the Trading Permit was in effect during that first month divided by the total number of trading days in such month multiplied by the monthly rate.

The Exchange recently modified the Trading Permit fees to provide lower fees to Market Makers that execute less volume than a certain volume threshold in certain Trading Permit Tier levels.[9] In particular, for Market Makers that fall within the following Trading Permit fee levels, which represent the 3rd or 4th levels of the fee table: (i) Market Maker Assignments in up to 100 option classes or up to 50% of option classes by volume, or (ii) Market Maker Assignments in over 100 option classes or over 50% of option classes by volume up to all option classes listed on MIAX Options; and whose total monthly Market Maker executed volume during the relevant month is less than 0.075% of the total monthly executed volume reported by OCC in the market maker account type for MIAX–listed option classes for that month, the Exchange assesses a Trading Permit fee of $15,500 instead of the fee otherwise applicable to such level.[10]

The Exchange now proposes to further modify its Trading Permit fees by lowering the monthly Market Maker executed volume threshold requirement from less than 0.075% to less than 0.060% of total monthly executed volume reported by OCC in the Market Maker account type for MIAX–listed option classes for that month, and which fall within the 3rd or 4th levels of the fee table. Accordingly, the Exchange proposes for these Monthly Trading Permit Fee levels, if the Market Maker's total monthly executed volume during the relevant month is less than 0.060% of the total monthly executed volume reported by OCC in the Market Maker account type for MIAX–listed option classes for that month, then the fee will be $15,500 instead of the fee otherwise applicable to such level. This is a proposed change to the Trading Permit fees for Market Makers that fall within the 3rd or 4th levels of the fee table.

The proposed adjustment to the threshold is based on an assessment of recent Market Maker volume trends on the Exchange. Specifically, the Exchange determined that, due to lower total monthly executed volume executed by certain larger-scale Market Makers, certain larger-scale Market Markers could potentially receive the lower fees, which lower fees were intended only to apply to smaller-scale Market Makers. Therefore, the Exchange

[3] The term ''Market Makers'' refers to ''Lead Market Makers,'' ''Primary Lead Market Makers'' and ''Registered Market Makers'' collectively. *See* Exchange Rule 100.

[4] The term ''MIAX Select Symbols'' means options overlying AAL, AAPL, AIG, AMAT, AMD, AMZN, BA, BABA, BB, BIDU, BP, C, CAT, CBS, CELG, CLF, CVX, DAL, EBAY, EEM, FB, FCX, GE, GILD, GLD, GM, GOOGL, GPRO, HAL, HTZ, INTC, IWM, JCP, JNJ, JPM, KMI, KO, MO, MRK, NFLX, NOK, NQ, ORCL, PBR, PFE, PG, QCOM, QQQ, RIG, S, SPY, T, TSLA, USO, VALE, VXX, WBA, WFC, WMB, WY, X, XHB, XLE, XLF, XLP, XOM, and XOP.

[5] *See* Section 1(a)(iii) of the Fee Schedule for a complete description of the Program.

[6] There is no limit on the number of Trading Permits that may be issued by the Exchange; however, the Exchange has the authority to limit or decrease the number of Trading Permits it has determined to issue provided it complies with the provisions set forth in Rule 200(a) and Section 6(c)(4) of the Exchange Act. *See* 15 U.S.C. 78(f)(c)(4). For a complete description of MIAX Options Trading Permits, *see* MIAX Rule 200.

[7] *See* the Fee Schedule, Section 3(b).

[8] The Exchange will use the following formula to calculate the percentage of total national average daily volume that the Market Maker assignment is for purposes of the Market Maker trading permit fee for a given month:

Market Maker assignment percentage of national average daily volume = [total volume during the prior calendar quarter in a class in which the Market Maker was assigned]/[total national volume in classes listed on MIAX Options in the prior calendar quarter].

[9] *See* Securities Exchange Act Release No. 82868 (March 13, 2018), 83 FR 12063 (March 19, 2018) (SR–MIAX–2018–08).

[10] For example, if Market Maker 1 elects to quote the top 40 option classes which consist of 58% of the total national average daily volume in the prior calendar quarter, the Exchange would assess $12,000 to Market Maker 1 for the month which is the lesser of 'up to 40 classes' and 'over 50% of classes by volume up to all classes listed on MIAX.' If Market Maker 2 elects to quote the bottom 1000 option classes which consist of 10% of the total national average daily volume in the prior quarter, the Exchange would assess $7,000 to Market Maker 2 for the month which is the lesser of 'over 100 classes' and 'up to 20% of classes by volume.'

believes that it is reasonable, equitable, and not unfairly discriminatory to adjust the monthly Market Maker executed volume threshold requirement from less than 0.075% to less than 0.060% of total monthly executed volume reported by OCC in the Market Maker account type for MIAX–listed option classes for that month, so that such lower fees will continue to apply to only smaller-scale Market Makers. The Exchange believes that by continuing to offer lower fees to Market Makers that execute less volume than a certain volume threshold in certain Trading Permit Tier levels, the Exchange will retain and attract smaller-scale Market Makers, which are an integral component of the option industry marketplace, but have been decreasing in number in recent years, due to industry consolidation and lower market maker profitability. Since these smaller-scale Market Makers execute less volume overall, the Exchange believes it is reasonable and appropriate to offer such Market Makers (that are willing to quote the majority or entirety of the market) lower fees.

Similarly, the Exchange also proposes to modify its MEI Port fees assessable to Market Makers. Currently, MIAX Options assesses monthly MEI Port fees on Market Makers based upon the number of classes or class volume accessed by the Market Maker. Market Makers are allocated two (2) Full Service MEI Ports [11] and two (2) Limited Service MEI Ports per matching engine [12] to which they connect. The Exchange currently assesses the following MEI Port fees: (a) $5,000 for Market Maker Assignments in up to 5 option classes or up to 10% of option classes by volume; (b) $10,000 for Market Maker Assignments in up to 10 option classes or up to 20% of option classes by volume; (c) $14,000 for Market Maker Assignments in up to 40 option classes or up to 35% of option classes by volume; (d) $17,500 for Market Maker Assignments in up to 100 option classes or up to 50% of option classes by volume; and (e) $20,500 for Market Maker Assignments in over 100 option classes or over 50% of option classes by volume up to all option classes listed on MIAX Options.[13] The Exchange also currently charges $100 per month for each additional Limited Service MEI Port per matching engine for Market Makers over and above the two (2) Limited Service MEI Ports per matching engine that are allocated with the Full Service MEI Ports. The Full Service MEI Ports, Limited Service MEI Ports and the additional Limited Service MEI Ports all include access to the Exchange's Primary and Secondary data centers and its Disaster Recovery center. For the calculation of the monthly MEI Port fees that apply to Market Makers, the number of classes is defined as the greatest number of classes the Market Maker was assigned to quote in on any given day within the calendar month and the class volume percentage is based on the total national average daily volume in classes listed on MIAX Options in the prior calendar quarter.[14] Newly listed option classes are excluded from the calculation of the monthly MEI Port fee until the calendar quarter following their listing, at which time the newly listed option classes will be included in both the per class count and the percentage of total national average daily volume.

The Exchange assesses Market Makers the monthly MEI Port fees based on the greatest number of classes listed on MIAX Options that the Market Maker was assigned to quote on any given day within a calendar month and the applicable fee rate that is the lesser of either the per class basis or percentage of total national average daily volume measurement.

The Exchange recently modified the MEI Port fees to provide lower fees to Market Makers that execute less volume than a certain volume threshold in certain MEI Port fee levels.[15] In particular, for Market Makers that fall within the following MEI Port fee levels, which represent the 4th or 5th levels of the fee table: Market Makers that have (i) Assignments in up to 100 option classes or up to 50% of option classes by volume, or (ii) Assignments in over 100 option classes or over 50% of option classes by volume up to all option classes listed on MIAX Options; and whose total monthly Market Maker executed volume during the relevant month is less than 0.075% of the total monthly executed volume reported by OCC in the market maker account type for MIAX-listed option classes for that month, the Exchange assesses a fee of $14,500 instead of the fee otherwise applicable to such level.[16]

The Exchange now proposes to further modify its MEI Port fees by lowering the monthly volume threshold requirement from less than 0.075% to less than 0.060% of total monthly Market Maker executed volume reported by OCC in the Market Maker account type for MIAX-listed option classes for that month, and which fall within the 4th or 5th levels of the fee table. Accordingly, the Exchange proposes for these MEI Port Fee levels, if the Market Maker's total monthly executed volume during the relevant month is less than 0.060% of the total monthly executed volume reported by OCC in the Market Maker account type for MIAX-listed option classes for that month, then the fee will be $14,500 instead of the fee otherwise applicable to such level. This is a proposed change to the MEI Port fees for Market Makers that fall within the 4th or 5th levels of the fee table.

The proposed adjustment to the threshold is based on an assessment of recent Market Maker volume trends on the Exchange. Specifically, the Exchange determined that, due to lower total monthly executed volume executed by certain larger-scale Market Makers, certain larger-scale Market Markers could potentially receive the lower fees, which lower fees were intended only to apply to smaller-scale Market Makers. Therefore, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to adjust the monthly Market Maker executed volume threshold requirement from less than 0.075% to less than 0.060% of total monthly executed volume reported by OCC in the Market Maker account type for MIAX-listed option classes for that month, so that such lower fees will continue to apply

[11] Full Service MEI Ports provide Market Makers with the ability to send Market Maker quotes, eQuotes, and quote purge messages to the MIAX Options System. Full Service MEI Ports are also capable of receiving administrative information. Market Makers are limited to two Full Service MEI Ports per matching engine.

[12] A ''matching engine'' is a part of the MIAX Options electronic system that processes options quotes and trades on a symbol-by-symbol basis. Some matching engines will process option classes with multiple root symbols, and other matching engines will be dedicated to one single option root symbol (for example, options on SPY will be processed by one single matching engine that is dedicated only to SPY). A particular root symbol may only be assigned to a single designated matching engine. A particular root symbol may not be assigned to multiple matching engines.

[13] *See* the Fee Schedule, Section 5(d)(ii).

[14] The Exchange will use the following formula to calculate the percentage of total national average daily volume that the Market Maker assignment is for purposes of the MEI Port fee for a given month:

Market Maker assignment percentage of national average daily volume = [total volume during the prior calendar quarter in a class in which the Market Maker was assigned]/[total national volume in classes listed on MIAX Options in the prior calendar quarter].

[15] *See supra* note 9.

[16] For example, if Market Maker 1 elects to quote the top 40 option classes which consist of 58% of the total national average daily volume in the prior calendar quarter, the Exchange would assess $14,000 to Market Maker 1 for the month which is the lesser of 'up to 40 classes' and 'over 50% of classes by volume up to all classes listed on MIAX.' If Market Maker 2 elects to quote the bottom 1000 option classes which consist of 10% of the total national average daily volume in the prior quarter, the Exchange would assess $5,000 to Market Maker 2 for the month which is the lesser of 'over 100 classes' and 'up to 10% of classes by volume.'

to only smaller-scale Market Makers. The Exchange believes that by continuing to offer lower fees to Market Makers that execute less volume than a certain volume threshold in certain MEI Port fee levels, the Exchange will retain and attract smaller-scale Market Makers, which are an integral component of the option industry marketplace, but have been decreasing in number in recent years, due to industry consolidation and lower market maker profitability. Since these smaller-scale Market Makers execute less volume overall, the Exchange believes it is reasonable and appropriate to offer such Market Makers (that are willing to quote the majority or entirety of the market) lower fees.

The Exchange also proposes to amend the list of MIAX Select Symbols contained in the Priority Customer Rebate Program of the Exchange's Fee Schedule to delete an obsolete reference. Specifically, the Exchange proposes to delete the symbol ''NQ'' associated with NQ Mobile Inc. The Exchange notes that, as a result of a recent corporate action, NQ changed its name, trading symbol, CUSIP, and business model. The company is now known as Link Motion Inc. (''LKM'').[17] The Exchange determined not to replace NQ with LKM, for business reasons. Therefore, NQ should be removed from the list of MIAX Select Symbols. By removing NQ from the list of MIAX Select Symbols, it will help to ensure that there is no confusion amongst market participants and will clarify that LKM is not a MIAX Select Symbol.

The Exchange initially filed the proposal on July 31, 2018 (SR–MIAX–2018–17). That filing was withdrawn and replaced with the current filing (SR–MIAX–2018–23).

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[18] in general, and furthers the objectives of Section 6(b)(4) and 6(b)(5) of the Act[19] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Exchange Members and issuers and other persons using any facility or system which the Exchange operates or controls. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act[20] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customer, issuers, brokers and dealers.

The Exchange believes that the proposed modification to the Trading Permit fees is consistent with Section 6(b)(4) of the Act in that it is reasonable, equitable and not unfairly discriminatory. The proposed modification to the Trading Permit fees is reasonable in that, by continuing to offer lower fees to Market Makers that execute less volume than a certain volume threshold in certain Trading Permit Tier levels, the Exchange will retain and attract smaller-scale Market Makers, which are an integral component of the option industry marketplace, but have been decreasing in number in recent years, due to industry consolidation and lower market maker profitability. Since these smaller-scale Market Makers execute less volume overall, the Exchange believes it is reasonable and appropriate to offer such Market Makers (that are willing to quote the majority or entirety of the market) lower fees. The Exchange also believes that its proposal is consistent with Section 6(b)(5) of the Act because it will be uniformly applied to all Market Makers that execute less volume on the Exchange, as determined and measured by a uniform, objective, quantitative volume amount. The Exchange notes that the proposed changes to Trading Permit fees apply only to the two highest tiers on the Fee Schedule. The Exchange believes that this is consistent with Section 6(b)(5) of the Act because it will allow for smaller-scale Market Makers, that execute less volume overall, to still be incentivized to quote the majority or entirety of the market, without paying the higher fees, which would be assessed to a Market Maker with a total monthly executed volume during the relevant month of greater than the proposed 0.060% of the total monthly executed volume reported by OCC in the market maker account type for MIAX-listed option classes for that month. The proposed Trading Permit fees are fair and equitable and not unreasonably discriminatory because they apply equally to all similarly situated Market Makers regardless of type and access to the Exchange is offered on terms that are not unfairly discriminatory.

The Exchange also believes that the proposed modification to the Trading Permit fees is reasonable in that it is based on an assessment of recent Market Maker volume trends on the Exchange. Specifically, the Exchange determined that, due to lower total monthly executed volume executed by certain larger-scale Market Makers, certain larger-scale Market Markers could potentially receive the lower fees, which lower fees were intended only to apply to smaller-scale Market Makers. Therefore, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to adjust the monthly Market Maker executed volume threshold requirement from less than 0.075% to less than 0.060% of total monthly executed volume reported by OCC in the Market Maker account type for MIAX-listed option classes for that month, so that such lower fees will continue to apply to only smaller-scale Market Makers. The Exchange believes that by continuing to offer lower fees to Market Makers that execute less volume than a certain volume threshold in certain Trading Permit Tier levels, the Exchange will retain and attract smaller-scale Market Makers, which are an integral component of the option industry marketplace, but have been decreasing in number in recent years, due to industry consolidation and lower market maker profitability. Since these smaller-scale Market Makers execute less volume overall, the Exchange believes it is reasonable and appropriate to offer such Market Makers (that are willing to quote the majority or entirety of the market) lower fees.

The Exchange believes that the proposed modification to the MEI Port fees is consistent with Section 6(b)(4) of the Act in that it is reasonable, equitable and not unfairly discriminatory. The proposed modification to the MEI Port fees is reasonable in that, by continuing to offer lower fees to Market Makers that execute less volume than a certain volume threshold in certain MEI Port fee levels, the Exchange will retain and attract smaller-scale Market Makers, which are an integral component of the option industry marketplace, but have been decreasing in number in recent years, due to industry consolidation and lower market maker profitability. Since these smaller-scale Market Makers execute less volume overall, the Exchange believes it is reasonable and appropriate to offer such Market Makers (who are willing to quote the majority or entirety of the market) lower fees. The Exchange also believes that its proposal is consistent with Section 6(b)(5) of the Act because it will be uniformly applied to all Market Makers that execute less volume on the Exchange, as determined and measured by a uniform, objective, quantitative volume amount. The Exchange notes

[17] The change became effective on March 14, 2018.

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(4)(5).

[20] 15 U.S.C. 78f(b)(5).

that the proposed changes to MEI Port fees apply only to the two highest tiers of the Fee Schedule. The Exchange believes that this is consistent with Section 6(b)(5) of the Act because it will allow for smaller-scale Market Makers, that execute less volume overall, to still be incentivized to quote the majority or entirety of the market, without paying the higher fees, which would be assessed to a Market Maker with a total monthly executed volume during the relevant month of greater than the proposed 0.060% of the total monthly executed volume reported by OCC in the market maker account type for MIAX-listed option classes for that month. The proposed MEI Port fees are fair and equitable and not unreasonably discriminatory because they apply equally to all similarly situated Market Makers regardless of type and access to the Exchange is offered on terms that are not unfairly discriminatory.

The Exchange also believes that the proposed modification to the MEI Port fees is reasonable in that it is based on an assessment of recent Market Maker volume trends on the Exchange. Specifically, the Exchange determined that, due to lower total monthly executed volume executed by certain larger-scale Market Makers, certain larger-scale Market Markers could potentially receive the lower fees, which lower fees were intended only to apply to smaller-scale Market Makers. Therefore, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to adjust the monthly Market Maker executed volume threshold requirement from less than 0.075% to less than 0.060% of total monthly executed volume reported by OCC in the Market Maker account type for MIAX–listed option classes for that month, so that such lower fees will continue to apply to only smaller-scale Market Makers. The Exchange believes that by continuing to offer lower fees to Market Makers that execute less volume than a certain volume threshold in certain MEI Port fee levels, the Exchange will retain and attract smaller-scale Market Makers, which are an integral component of the option industry marketplace, but have been decreasing in number in recent years, due to industry consolidation and lower market maker profitability. Since these smaller-scale Market Makers execute less volume overall, the Exchange believes it is reasonable and appropriate to offer such Market Makers (that are willing to quote the majority or entirety of the market) lower fees.

Furthermore, the proposal to delete the symbol NQ from the list of MIAX Select Symbols contained in the Priority Customer Rebate Program is consistent with Section 6(b)(4) of the Act because the proposed change will benefit investors by providing them an accurate, up-to-date list of MIAX Select Symbols contained in the Priority Customer Rebate Program on the Fee Schedule. The Exchange believes that the credit for transactions in the select symbols is reasonably designed because it continues to incentivize providers of Priority Customer order flow to send that Priority Customer order flow to the Exchange in order to receive a credit in a manner that enables the Exchange to improve its overall competitiveness and strengthen its market quality for all market participants. Additionally, the Exchange believes that its decision not to list the symbol LKM, which replaced NQ, is reasonably designed to increase the competitiveness of the Exchange with other options exchange in that the Exchange does not believe the symbol LKM should be included as a higher volume symbol in the MAIX Select Symbol program. The Exchange also believes that its proposal is consistent with Section 6(b)(5) of the Act because it will apply equally to all Priority Customer orders in the select symbols. All similarly situated Priority Customer orders in the select symbols are subject to the same rebate schedule, and access to the Exchange is offered on terms that are not unfairly discriminatory. In addition, the Program is equitable and not unfairly discriminatory because, while only Priority Customer order flow qualifies for the Program, an increase in Priority Customer order flow will bring greater volume and liquidity, which benefit all market participants by providing more trading opportunities and tighter spreads.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule changes will increase both intermarket and intramarket competition by continuing to enable smaller-scale Market Makers that are willing to quote the entire marketplace (or a substantial amount of the entire marketplace) access to the Exchange at a lower fee. By continuing to offer lower fees to Market Makers that execute less volume than a certain volume threshold at certain fee levels, the Exchange believes that it will retain and attract smaller-scale Market Makers, which are an integral component of the option industry marketplace, but have been decreasing in number in recent years, due to industry consolidation and lower market maker profitability. Since these smaller-scale Market Makers execute less volume overall, the Exchange believes it is reasonable and appropriate to offer such Market Makers lower fees. The Exchange also believes that removing the symbol NQ from the MIAX Select Symbols and not replacing it with symbol LKM will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change will increase both intermarket and intramarket competition by providing investors an accurate, up-to-date list of MIAX Select Symbols contained in the Priority Customer Rebate Program on the Fee Schedule and by continuing to provide increased incentives only for higher volume symbols that the Exchange believes will increase the competitiveness of the Exchange with other options exchange that also offer increased incentives to higher volume symbols.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. The Exchange believes that the proposed rule changes reflect this competitive environment because they modify the Exchange's fees in a manner that continues to encourage market participants to register as Market Makers on the Exchange, to provide liquidity and to attract order flow. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market liquidity.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[21] and Rule 19b–4(f)(2)[22] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission

[21] 15 U.S.C. 78s(b)(3)(A)(ii).

[22] 17 CFR 240.19b–4(f)(2).

summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MIAX–2018–23 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2018–23. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2018–23, and should be submitted on or before September 10, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2018–17849 Filed 8–17–18; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83837; File No. SR–NYSEArca–2018–59]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rules 6.4–O and 6.4A–O

August 14, 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 August 3, 2018, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rules 6.4–O and 6.4A–O. 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 purpose of this filing is to amend Rules 6.4–O (Series of Options Open for Trading) and 6.4A–O (Select Provisions of the Options Listing Procedures Plan)—or OLPP—to conform to recently approved changes to the OLPP.[4]

The Exchange, which is one of the Participant Exchanges[5] to the OLPP, currently has rules that are designed to incorporate the requirements of the OLPP. All Participant Exchanges have similar such (essentially uniform) rules to ensure consistency and compliance with the OLPP. The Exchange proposes to modify such rules to reflect the recent updates as described below.

Addition of Long-Term Equity Options (''LEAPS'')

First, the OLPP has been amended to change the earliest date on which new January LEAPS on equity options, options on Exchange Traded Funds (''ETF''), or options on Trust Issued Receipts (''TIR'') may be added to a single date (from three separate months).[6] As noted in the OLPP Notice, in the past there were operational concerns related to adding new January LEAPs series for all options classes on which LEAPs were listed on a single trading day.[7] And, the addition of new series in a pre-electronic trading environment was a manual process. To

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[23] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release Nos. 82235 (December 7, 2017), 82 FR 58668 (December 13, 2017) (order approving the Fourth Amendment to the OLPP); 81893 (October 18, 2017), 82 FR 49249 (''OLPP Notice'').

[5] In addition to the Exchange, the ''Participant Exchanges'' are: Chicago Board Options Exchange, Incorporated (now known as Cboe Exchange, Inc.), on behalf of the BATS Exchange, Inc. (now known as Cboe BZX Exchange, Inc.); Box Options Exchange, LLC; C2 Exchange, Incorporated (now known as Cboe C2 Exchange, Inc.); EDGX Exchange, Inc. (now known as Cboe EDGX Exchange, Inc.); Miami International Securities Exchange, LLC; MIAX PEARL, LLC; Nasdaq BX, Inc.; Nasdaq GEMX, LLC; Nasdaq ISE, LLC; Nasdaq MRX, LLC; Nasdaq Options Market, LLC; Nasdaq PHLX, LLC; and NYSE American, LLC.

[6] The Exchange proposes to modify Rule 6.4–O(d) to include the title Long-Term Equity Option Series (LEAPS), to consolidate LEAPS requirements into one paragraph, and to delete extraneous references to LEAPS in current paragraphs (d) and (e) to Rule 6.4–O. *See* proposed Rule 6.4–O(d). Consistent with this change, the Exchange also proposes to retitle current paragraph (f) as (e). *See* proposed Rule 6.4–O(f).

[7] *See supra* n. 4, 82 FR 49249, at 49249.

accommodate this, the addition of new January LEAPs series was spread across three months (September, October, and November). Today, however, these operational concerns related to January LEAPs have been alleviated as new series can be added in bulk electronically. The Plan Participants, including the Exchange, believe that moving the addition of new January LEAPs series to no earlier than the Monday prior to the September expiration would reduce marketplace confusion about available January LEAPs series. Where previously January LEAPs series for options classes on the February or March expiration cycles would not have been available as early as January LEAPs series for options classes on the January expiration cycle, under the proposed change, all January LEAPs series will be available concurrently.

Accordingly, to conform to this change, the Exchange proposes to modify Rule 6.4–O(d)(i) to reflect that new January LEAPS series on equity options classes, options on ETFs, or options on TIRs, may not be added on a currently listed and traded option class earlier than the Monday prior to the September expiration (which is 28 months before the expiration).[8]

Addition of Equity, ETF, and TIR Option Series After Regular Trading Hours

Second, the OLPP has been amended to allow equity, ETF, and TIR option series to be added based on trading after regular trading hours (*i.e.,* after-market). As noted in the OLPP Notice, the prior version of the OLPP did not allow for option series to be added based on trading following regular trading hours.[9] As such, the Exchange Participants were are [sic] unable to add new option series that may result from trading following regular trading hours until the next morning, depending on the range of prices in pre-market trading, which is significant because events that occur after regular trading hours, such as earnings releases, often have an important impact on the price of an underlying security. In addition, there are operational difficulties for market participants throughout the industry adding series after system startup. To avoid the potential burden that would result from the inability to add series as a result of trading following regular trading hours, the OLPP was amended to allow an additional category by which the price of an underlying security may be measured. Specifically, to conform to the amended OLPP, the Exchange proposes to add paragraph (b)(i)(4) to Rule 6.4A–O to provide that ''for option series to be added based on trading following regular trading hours,'' the price of the underlying security is measured by ''the most recent share price reported by all national securities exchanges between 4:15 p.m. and 6:00 p.m. Eastern Time.'' [10]

Technical Changes

The Exchange proposes to modify Rule 6.4–O(d)(i) to delete now obsolete operational language, which dates back to when LEAPs were first adopted. The language in question provides that:

> When open for trading, trading in such option series shall commence either when there is buying or selling interest, or forty minutes prior to the close of trading for the day, whichever occurs first. Quotations will not be posted for extended far term option series until trading in such series is commenced on the day.

The Exchange proposes to delete this language because when this language was adopted LEAPs were not opened for trading until late in the trading day unless there was buying or selling interest.[11] Today, however, technological improvements allow the Exchange to open all LEAP series at the same time as all other series in an option class.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) [12] of the Act, in general, and furthers the objectives of Section 6(b)(5),[13] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system.

In particular, the proposed rule change, which conforms to the recently adopted provisions of the OLPP, as amended, allows the Exchange to continue to list extended far term option series that have been viewed as beneficial to traders, investors and public customers. Accordingly, the Exchange believes that the proposal is consistent with the Act because it will allow the Exchange to list all January, 2021 expiration series on the Monday prior to the September, 2018 expiration. Moreover, this change would simplify the process for adding new January LEAP options series and reduce potential for investor confusion because all new January LEAP options would be made available beginning at the same time, consistent with the amended OLPP. The Exchange notes that this proposal does not propose any new provisions that have not already been approved by the Commission in the amended OLPP, but instead maintains series listing rules that conform to the amended OLPP.

The proposal to permit series to be added based on after-market trading is designed 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 mechanisms of a free and open market and a national market system, by allowing the Exchange to make series available for trading with reduced operational difficulties. The Exchange notes that this proposed change, which is consistent with the amended OLPP should provide market participants with earlier notice regarding what options series will be available for trading the following day, and should help to enhance investors' ability to plan their options trading.

The Exchange also believes that the proposed technical changes, including deleting obsolete language and reorganizing and consolidating the rule, 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.

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. Specifically, the Exchange believes that by conforming Exchange rules to the amended OLPP, the Exchange would promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. The Exchange believes that adopting rules, which it anticipates will likewise be adopted by Participant Exchanges, would allow for continued competition between Exchange market participants trading similar products as their counterparts

[8] *See* proposed Rule 6.4–O(d)(ii).

[9] *See supra* n. 4, 82 FR 49249, at 49250.

[10] *See* proposed Rule 6.4A–O(b)(i)(4). The Exchange proposes to relocate ''and'' from paragraph (2) to (3) to conform to the change. *See* proposed Rule 6.4A–O(b)(i)(2),(3).

[11] *See* proposed Rule 6.4–O(d)(i).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

on other exchanges, while at the same time allowing the Exchange to continue to compete for order flow with other exchanges in option issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [14] and Rule 19b–4(f)(6) thereunder.[15] 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [16] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[17] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission notes that the Exchange's proposal would conform the Exchange's rules to the amended OLPP, which the Commission previously approved.[18] Accordingly, the Commission believes that the proposal raises no new or novel regulatory issues and waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission therefore waives the 30-day operative delay and designates the proposed rule change to be operative upon filing.[19]

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) [20] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2018–59 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2018–59. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2018–59 and should be submitted on or before September 10, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Robert W. Errett,

Deputy Secretary.

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[14] 15 U.S.C. 78s(b)(3)(A)(iii).

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] *See* OLPP Notice, *supra* note 4.

[19] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[20] 15 U.S.C. 78s(b)(2)(B).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83842; File No. SR–NYSEAMER–2018–40]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rules 903 and 903A

August 14, 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 August 3, 2018, NYSE American LLC (''Exchange'' or ''NYSE American'') 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rules 903 and 903A. 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

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 purpose of this filing is to amend Rules 903 (Series of Options Open for Trading) and 903A (Select Provisions of the Options Listing Procedures Plan)—or OLPP—to conform to recently approved changes to the OLPP.[4]

The Exchange, which is one of the Participant Exchanges[5] to the OLPP, currently has rules that are designed to incorporate the requirements of the OLPP. All Participant Exchanges have similar such (essentially uniform) rules to ensure consistency and compliance with the OLPP. The Exchange proposes to modify such rules to reflect the recent updates as described below.

Addition of Long-Term Equity Options (''LEAPS'')

First, the OLPP has been amended to change the earliest date on which new January LEAPS on equity options, options on Exchange Traded Funds (''ETF''), or options on Trust Issued Receipts (''TIR'') may be added to a single date (from three separate months). As noted in the OLPP Notice, in the past there were operational concerns related to adding new January LEAPs series for all options classes on which LEAPs were listed on a single trading day.[6] And, the addition of new series in a pre-electronic trading environment was a manual process. To accommodate this, the addition of new January LEAPs series was spread across three months (September, October, and November). Today, however, these operational concerns related to January LEAPs have been alleviated as new series can be added in bulk electronically. The Plan Participants, including the Exchange, believe that moving the addition of new January LEAPs series to no earlier than the Monday prior to the September expiration would reduce marketplace confusion about available January LEAPs series. Where previously January LEAPs series for options classes on the February or March expiration cycles would not have been available as early as January LEAPs series for options classes on the January expiration cycle, under the proposed change, all January LEAPs series will be available concurrently.

Accordingly, to conform to this change, the Exchange proposes to modify Commentary .03(b) to Rule 903 to reflect that new January LEAPS series on equity options classes, options on ETFs, or options on TIRs, may not be added on a currently listed and traded option class earlier than the Monday prior to the September expiration (which is 28 months before the expiration).[7]

Addition of Equity, ETF, and TIR Option Series After Regular Trading Hours

Second, the OLPP has been amended to allow equity, ETF, and TIR option series to be added based on trading after regular trading hours (*i.e.,* after-market). As noted in the OLPP Notice, the prior version of the OLPP did not allow for option series to be added based on trading following regular trading hours.[8] As such, the Exchange Participants were are [sic] unable to add new option series that may result from trading following regular trading hours until the next morning, depending on the range of prices in pre-market trading, which is significant because events that occur after regular trading hours, such as earnings releases, often have an important impact on the price of an underlying security. In addition, there are operational difficulties for market participants throughout the industry adding series after system startup. To avoid the potential burden that would result from the inability to add series as a result of trading following regular trading hours, the OLPP was amended to allow an additional category by which the price of an underlying security may be measured. Specifically, to conform to the amended OLPP, the Exchange proposes to add paragraph (b)(i)(4) to Rule 903A to provide that ''for option series to be added based on trading following regular trading hours,'' the price of the underlying security is measured by ''the most recent share price reported by all national securities exchanges between 4:15 p.m. and 6:00 p.m. Eastern Time.''[9]

Technical Changes

The Exchange proposes to modify the description of LEAPs in Commentary .03(a) to Rule 903 to clarify the application of rules regarding LEAPs. The Exchange proposes to explicitly state that a LEAP is a series ''that expire[s] twelve (12) to thirty-nine (39) months from the time they are opened for trading, and stock index options that expire twelve (12) to thirty-six (36) months from the time they are opened for trading'' and that there may up to six ''extended far term'' expiration months ''for any index, Exchange-Trade Fund Share, or equity option class.''[10] Currently, the Exchange rules do not set forth the minimum amount of time to expiration for consideration of an expiration month as a LEAP, nor do the rules explicate that there may only be six LEAP expiration months for any index, Exchange Traded Fund Share, or equity option class. The Exchange also does not currently specify that the potential additional expirations months are ''extended far term'' expirations months. The Exchange believes this proposed change would add clarity and transparency to Exchange rules and is consistent with analogous rules of other exchanges.[11]

The Exchange proposes to modify Commentary .03(a) to Rule 903 to delete now obsolete operational language, which dates back to when LEAPs were first adopted. The language in question provides that:

> Further, such option series will open for trading either when there is buying or selling interest, or 40 minutes prior to the close, whichever occurs first. No quotations need to be posted for such option series until they are opened for trading.

The Exchange proposes to delete this language because when this language

[4] *See* Securities Exchange Act Release Nos. 82235 (December 7, 2017), 82 FR 58668 (December 13, 2017) (order approving the Fourth Amendment to the OLPP); 81893 (October 18, 2017), 82 FR 49249 (''OLPP Notice'').

[5] In addition to the Exchange, the ''Participant Exchanges'' are: Chicago Board Options Exchange, Incorporated (now known as Cboe Exchange, Inc.), on behalf of the BATS Exchange, Inc. (now known as Cboe BZX Exchange, Inc.); Box Options Exchange, LLC; C2 Exchange, Incorporated (now known as Cboe C2 Exchange, Inc.); EDGX Exchange, Inc. (now known as Cboe EDGX Exchange, Inc.); Miami International Securities Exchange, LLC; MIAX PEARL, LLC; Nasdaq BX, Inc.; Nasdaq GEMX, LLC; Nasdaq ISE, LLC; Nasdaq MRX, LLC; Nasdaq Options Market, LLC; Nasdaq PHLX, LLC; and NYSE Arca Inc.

[6] *See supra* n. 4, 82 FR 49249, at 49249.

[7] *See* proposed Commentary .03(b) to Rule 903.

[8] *See supra* n. 4, 82 FR 49249, at 49250.

[9] *See* proposed Rule 903A(b)(i)(4). The Exchange proposes to relocate ''and'' from paragraph (2) to (3) to conform to the change. *See* proposed Rule 903A(b)(i)(2),(3).

[10] *See* proposed Commentary .03(a) to Rule 903.

[11] *See, e.g.,* NYSE Arca Rule 6.4–O(d), (e).

was adopted LEAPs were not opened for trading until late in the trading day unless there was buying or selling interest.[12] Today, however, technological improvements allow the Exchange to open all LEAP series at the same time as all other series in an option class.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[13] of the Act, in general, and furthers the objectives of Section 6(b)(5),[14] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system.

In particular, the proposed rule change, which conforms to the recently adopted provisions of the OLPP, as amended, allows the Exchange to continue to list extended far term option series that have been viewed as beneficial to traders, investors and public customers. Accordingly, the Exchange believes that the proposal is consistent with the Act because it will allow the Exchange to list all January, 2021expiration series on the Monday prior to the September, 2018 expiration. Moreover, this change would simplify the process for adding new January LEAP options series and reduce potential for investor confusion because all new January LEAP options would be made available beginning at the same time, consistent with the amended OLPP. The Exchange notes that this proposal does not propose any new provisions that have not already been approved by the Commission in the amended OLPP, but instead maintains series listing rules that conform to the amended OLPP.

The proposal to permit series to be added based on after-market trading is designed 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 mechanisms of a free and open market and a national market system, by allowing the Exchange to make series available for trading with reduced operational difficulties. The Exchange notes that this proposed change, which is consistent with the amended OLPP should provide market participants with earlier notice regarding what options series will be available for trading the following day, and should help to enhance investors' ability to plan their options trading.

The Exchange also believes that the proposed technical changes, including adopting language to conform the rule text to clarify the operation of LEAPs, promotes just and equitable principles of trade (which aligns with approved rules of other options exchanges (*see supra* n. 11), 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.

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. Specifically, the Exchange believes that by conforming Exchange rules to the amended OLPP, the Exchange would promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. The Exchange believes that adopting rules, which it anticipates will likewise be adopted by Participant Exchanges, would allow for continued competition between Exchange market participants trading similar products as their counterparts on other exchanges, while at the same time allowing the Exchange to continue to compete for order flow with other exchanges in option issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[15] and Rule 19b–4(f)(6) thereunder.[16] 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[17] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[18] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission notes that the Exchange's proposal would conform the Exchange's rules to the amended OLPP, which the Commission previously approved.[19] Accordingly, the Commission believes that the proposal raises no new or novel regulatory issues and waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission therefore waives the 30-day operative delay and designates the proposed rule change to be operative upon filing.[20]

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)[21] 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:

[12] *See* proposed Commentary .03(a) to Rule 903.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78s(b)(3)(A)(iii).

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 240.19b–4(f)(6)(iii).

[19] *See* OLPP Notice, *supra* note 4.

[20] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[21] 15 U.S.C. 78s(b)(2)(B).

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–2018–40 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–NYSEAMER–2018–40. 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–2018–40 and should be submitted on or before September 10, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2018–17829 Filed 8–17–18; 8:45 am]

BILLING CODE 8011–01–P

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83845; File No. SR–NYSEArca–2018–57]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the Amplify BlackSwan Growth & Treasury Core ETF Under Commentary .02 to NYSE Arca Rule 5.2–E(j)(3)

August 14, 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 July 31, 2018, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change. On August 10, 2018, the Exchange filed Amendment No. 1 to 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, as modified by Amendment No. 1, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade the shares of the following fund of the Amplify ETF Trust under Commentary .02 to NYSE Arca Rule 5.2–E(j)(3) (''Investment Company Units''): the Amplify BlackSwan Growth & Treasury Core ETF. This Amendment No. 1 to SR–NYSEArca–2018–57 replaces SR–NYSEArca–2018–57 as originally filed and supersedes such filing in its entirety. The proposed 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 list and trade shares (''Shares'') of the Amplify BlackSwan Growth & Treasury Core ETF (''Fund'') under Commentary .02 to NYSE Arca Rule 5.2–E(j)(3), which governs the listing and trading of Investment Company Units (''Units'') on the Exchange.[4] The Fund will be an index-based exchange traded fund (''ETF''). The Shares will be offered by the Amplify ETF Trust (''Trust''), which is registered with the Commission as an investment company and has filed a registration statement on Form N–1A (''Registration Statement'') with the Commission on behalf of the Fund.[5]

Amplify Investments LLC will be the investment adviser (''Adviser'') to the Fund. CSAT Investment Advisory, L.P., d/b/a Exponential ETFs will serve as sub-adviser for the Fund (''Sub-Adviser''). U.S. Bancorp Fund Services, LLC will be the administrator, custodian and fund accounting and transfer agent for the Fund. Quasar Distributors LLC will serve as the distributor for the Fund.

Commentary .02(b)(i) to Rule 5.2–E(j)(3) provides that, if the applicable index is maintained by a broker-dealer or fund advisor, the broker-dealer or fund advisor shall erect and maintain a ''fire wall'' around the personnel who have access to information concerning changes and adjustments to the index.[6]

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] NYSE Arca Rule 5.2–E(j)(3)(A) provides that an Investment Company Unit is a security that represents an interest in a registered investment company that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities (or holds securities in another registered investment company that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities).

[5] *See* Post-Effective Amendment No. 65 to Registration Statement on Form N–1A for the Trust, dated June 26, 2018 (File Nos. 333–207937 and 811–23108). The descriptions of the Fund and the Shares contained herein are based, in part, on information in the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act''). *See* Investment Company Act Release No. 31822 (September 14, 2015) (File No. 812–14424) (''Exemptive Order'').

[6] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser and Sub-adviser are subject to the provisions of Rule 204A–1 under the Advisers

The ''Index Provider'' (''ARGI Investment Services LLC'') is registered as an investment adviser but is not registered as a broker-dealer or affiliated with a broker-dealer.[7] The Adviser is not registered as a broker-dealer but is affiliated with a broker-dealer and has implemented and will maintain a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Fund's portfolio. The Sub-Adviser is not registered as a broker-dealer or affiliated with a broker-dealer. In the event (a) the Adviser or the Sub-Adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

The Exchange is submitting this proposed rule change because the Index for the Fund does not meet all of the ''generic'' listing requirements of Commentary .02(a) to NYSE Arca Rule 5.2–E(j)(3), applicable to the listing of Units based on an index of ''Fixed Income Securities.''[8] Specifically, Commentary .02(a) to NYSE Arca Rule 5.2–E(j)(3) sets forth the requirements to be met by components of an index or portfolio of Fixed Income Securities underlying a series of Units. Because, as discussed in more detail herein, the ARGI BlackSwan Core Index (the ''Index'') will include ''LEAPS'' (as described below), the Index does not satisfy the requirements of Commentary .02(a)(1) to Rule 5.2–E(j)(3).[9] The Exchange represents that the Index will meet each of the initial and continued listing criteria in Commentary .02 to Rule 5.2–E(j)(3) with the exception of the requirements of Commentary .02 (a)(1) to Rule 5.2–E(j)(3).

Amplify BlackSwan Growth & Treasury Core ETF

Principal Investments

According to the Registration Statement, the Fund will seek investment results that generally correspond (before fees and expenses) to the price and yield of the Index. Under normal market conditions,[10] the Fund will invest at least 80% of its total assets in the securities that comprise the Index, which are U.S. Treasury securities and long-dated call options (''LEAPS'')[11] on the SPDR S&P 500 ETF Trust (''SPY'').[12] These options are referred to herein as ''SPY LEAPS''. The Fund, using an indexing investment approach, attempts to replicate, before fees and expenses, the performance of the Index.[13] The Index was created and is maintained by the Index Provider.

According to the Registration Statement, the Index is a rules-based, quantitative index that seeks to provide capital protection against the unpredictable, rare and highly disruptive events that have come to be referred to as ''Black Swans.'' The Index endeavors to provide investment returns that correspond to those of the S&P 500 Index, while mitigating against significant losses. One portion of the Index is a portfolio of U.S. Treasury securities and the other is a portfolio of SPY LEAPS. Twice a year, in June and December, on the Index reconstitution and rebalance date, the Index places 90% of its index market capitalization in the portfolio of U.S. Treasury securities and 10% of its index market capitalization in the portfolio of LEAPS.

According to the Registration Statement, the U.S. Treasury portfolio of the Index is comprised of 2-, 3-, 5-, 7-, 10- and 30-year U.S. Treasury securities that cumulatively provide a portfolio duration that matches the initial duration of the 10-year U.S. Treasury security.

The LEAPS portfolio of the Index is composed of in-the-money LEAPS that, at the time of purchase, had expirations of at least one year and one day in the future and expire in either June or December, as applicable.[14] For the LEAPS in the Index and in which the Fund invests, the reference asset is SPY. The LEAPS will generally have a delta of 70 at the time of purchase, meaning that for every $1.00 of movement in the share price of SPY, the price of the LEAPS will have a corresponding movement of $0.70. LEAPS positions are reconstituted twice per year on the first trading day of June and December. At each June reconstitution, the Index liquidates its existing June LEAPS and purchases LEAPS that expire the following June. The December LEAPS positions will remain unchanged at each June reconstitution. At each December reconstitution, the Index liquidates its existing December LEAPS and purchases LEAPS that expire the following December. The June LEAPS positions will remain unchanged at each December reconstitution. Net gains or losses derived from the reconstitutions of the LEAPS positions will be added to or subtracted from the U.S. Treasury portfolio at each reconstitution.

Other Investments

While, under normal market conditions, the Fund will invest at least 80% of its total assets in the securities that comprise the Index, as described above, the Fund may hold other securities and financial instruments, as described below.

The Fund may hold cash and cash equivalents.[15]

The ARGI BlackSwan Core Index

According to the Registration Statement, the ARGI BlackSwan Core Index is composed of U.S. Treasury securities and SPY LEAPS. The Index seeks to realize capital appreciation in

Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act.

[7] The Index Provider is not affiliated with the Fund, Adviser or Sub-Adviser.

[8] Commentary .02 to NYSE Arca Rule 5.2–E(j)(3) states that Fixed Income Securities are debt securities that are notes, bonds, debentures or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities, government-sponsored entity securities, municipal securities, trust preferred securities, supranational debt and debt of a foreign country or a subdivision thereof.

[9] Commentary .02(a)(1) to Rule 5.2–E(j)(3) provides that, with respect to components of an index or portfolio underlying a series of Units listed pursuant to Rule 19b–4(e) under the Act, the following criterion shall be met on an initial and continued listing basis: The index or portfolio must consist of (a) only Fixed Income Securities or (b) Fixed Income Securities and cash.

[10] For purposes of this filing, the term ''normal market conditions'' is as that term is defined in NYSE Arca Rule 8.600–E(c)(5).

[11] Long-term Equity AnticiPation Securities℠ (''LEAPS®'') are long-term exchange-traded call options. Call options allow holders the opportunity to participate in the underlying securities' appreciation in excess of a specified strike price without receiving payments equivalent to any cash dividends declared on the underlying securities. A holder of a LEAPS will be entitled to receive a specified number of shares of the underlying stock upon payment of the strike price, and therefore the LEAPS will be exercisable when the price of the underlying stock is above the strike price. However, if at expiration the price of the underlying stock is at or below the strike price, the LEAPS will expire and be worthless. LEAPS are traded on U.S. options exchanges.

[12] Shares of the SPDR S&P 500 ETF Trust are listed and traded on the Exchange.

[13] The Index is compiled by the Index Provider and calculated by S-Network Global Indexes, Inc. (the ''Calculation Agent'').

[14] An ''in-the-money'' call option contract is an option contract with a strike price that is below the current price of the underlying reference asset.

[15] For purposes of this filing, the term ''cash equivalents'' has the meaning specified in Commentary .01(c) to NYSE Arca Rule 8.600–E.

line with the performance of SPY while avoiding substantial capital drawdowns.

On each rebalancing date, the Index places 90% of its index market capitalization in treasuries and 10% in SPY LEAPS. The weighting among U.S. Treasury securities is determined by the option reconstitution schedule.

The option portion of the portfolio holds 5% of Index market capitalization in June 70-delta SPY LEAPS and 5% in December 70-delta SPY LEAPS. Initially and at each Index rebalance date, calls that are purchased should all have at least one year plus one day until expiration. The 70-delta rule only applies to initial purchases on the rebalance date. Should there not be a 70-delta option, the closest option above 70 will be utilized.

The treasury position holds 5% of its allocated portion of Index market capitalization in a ''barbell'' portfolio of 2- and 30-year treasuries, and 95% of its allocated portion of market capitalization in a core portfolio that invests in 3-, 5-, 7-, 10- and 30-year treasuries.

The Index is overseen by a committee (the ''Committee'') that is responsible for overseeing the activities of the Calculation Agent and approving all changes to the Index related to its semi-annual reconstitutions and quarterly rebalances. All members of the Committee and their advisors shall comply with the Calculation Agent's code of conduct and ethics with respect to the disclosure and use of material non-public information.

Surveillance

The Exchange believes that sufficient protections are in place to protect against market manipulation of the Fund's Shares and SPY LEAPS for several reasons: (i) The diversity, liquidity, and market cap of the securities underlying the S&P 500 Index, which deters manipulation of the S&P 500 Index and mitigates risk associated with manipulation in SPY LEAPS; [16] (ii) liquidity in the market for SPY LEAPS and shares of the SPDR S&P 500 ETF Trust; [17] and (iii) surveillances by the Exchange and the Financial Industry Regulatory Authority (''FINRA'') designed to detect violations of self-regulatory organization (''SRO'') rules and the federal securities laws.[18] In this regard, the Exchange has in place a surveillance program for transactions in ETFs to ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the Shares less readily susceptible to manipulation. The Exchange notes that the Fund's portfolio is not readily susceptible to manipulation as assets in the portfolio, comprised primarily of U.S. Treasury securities [19] and SPY LEAPS, will be acquired in extremely liquid and highly regulated markets.

Exchange and FINRA surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and SPY LEAPS with other markets and other entities that are members of the Intermarket Surveillance Group (''ISG''), and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares and SPY LEAPS from such markets and other entities.[20] In addition, the Exchange may obtain information regarding trading in the Shares and SPY LEAPS from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's Trade Reporting and Compliance Engine (''TRACE'').

All statements and representations made in this filing regarding (a) the description of the portfolio or reference asset, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares of the Fund on the Exchange.

The issuer must notify the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

SPY LEAPS are highly liquid and derive their value from the actively traded S&P 500 Index components. The contracts are cash-settled, and trade in competitive auction markets with price and quote transparency. The Exchange believes the highly regulated options markets and the broad base and scope of the S&P 500 Index make securities that derive their value from that index less susceptible to market manipulation in view of market capitalization and liquidity of the S&P 500 Index components, price and quote transparency, and arbitrage opportunities.

The Exchange believes that the liquidity of the markets for U.S. Treasury securities in the Fund's portfolio, S&P 500 Index securities, and SPY LEAPS is sufficiently great to deter fraudulent or manipulative acts associated with the price of a Fund's Shares.[21] The Exchange also believes that such liquidity is sufficient to support the creation and redemption mechanism. The Fund's investments will be consistent with its investment objective and will not be used to enhance leverage. The Fund's investments will not be used to seek

[16] Intraday quotations and last sale information for LEAPS are available directly from the exchange on which they are traded or through the Options Price Reporting Authority. Information about existing outstanding interest in LEAPS is available on the Options Clearing Corporation's (''OCC'') website.

[17] The Exchange notes that the S&P 500 Index underlying SPY would meet the generic listing standards applicable to an index composed of U.S. Component Stocks in Commentary .01(a) to NYSE Arca Rule 5.2–E(j)(3), including criteria relating to liquidity, market capitalization and diversification.

[18] FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[19] The U.S. Treasury securities market is highly liquid. The Treasury market and its participants are subject to a wide range of oversight and regulations, including requirements designed to prevent market manipulation and other abuses. For example, Treasury market participants and the Treasury market, itself, are subject to significant oversight by a number of regulatory authorities, including the Treasury, the Commission, federal bank regulators, and FINRA. The Exchange believes that the U.S. Treasury securities that the Fund will acquire as part of its strategy are not readily susceptible to market manipulation due to the liquidity and extensive oversight associated with the U.S. Treasury securities market.

[20] For a list of the current members of ISG, *see www.isgportal.org.* The Exchange notes that not all components of the Fund's portfolio may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[21] As of August 9, 2018, open interest in SPY LEAPS was 1,072,869 contracts. In addition, options on SPY have the highest liquidity among all exchange-traded fund options, with open interest far in excess of other ETFs in option market liquidity. As of June 19, 2018, open interest on SPY contracts were 17,771,528, whereas the next highest ETF options were iShares MSCI Emerging Markets ETF (EEM) and PowerShares QQQ Trust (QQQ) at 6,635,087 and 6,488,055, respectively. Source: Bloomberg.

performance that is the multiple or inverse multiple (*e.g.,* 2x or −2x) of the Index. The Fund's use of derivative instruments will be collateralized. The Exchange represents that, except as described above, the Fund and the Index will meet each of the initial and continued listing criteria in Commentary .02 to Rule 5.2–E (j)(3) with the exception of meeting the requirements of Commentary .02(a)(1) to Rule 5.2–E(j)(3) with respect to SPY LEAPS applicable to the listing of Units based upon an index of Fixed Income Securities. In addition, the Exchange represents that the Shares of the Fund will comply with all other requirements applicable to Units, which includes requirements relating to the dissemination of key information such as the Index value, the net asset value (''NAV''), and the Intraday Indicative Value (''IIV''), rules governing the trading of equity securities, trading hours, trading halts, firewalls for the Index Provider and Adviser, surveillance, and the Information Bulletin, as set forth in Exchange rules applicable to Units and the orders approving such rules.

Quotation and last sale information for U.S. exchange-listed options contracts cleared by the OCC is available via the Options Price Reporting Authority. Quotation information for LEAPS is available directly from the exchange on which they are traded. The intra-day, closing and settlement prices of exchange-traded options will be readily available from the options exchanges, automated quotation systems, published or other public sources, or online information services such as Bloomberg or Reuters. Price information on Treasury bills, cash equivalents and other short-term instruments is available from major broker-dealer firms or market data vendors, as well as from automated quotation systems, published or other public sources, or online information services. On each business day, before commencement of trading in the Shares on the Exchange during the Exchange's Core Trading Session, the portfolio that will form the basis for the Fund's calculation of the NAV at the end of the business day will be provided on the Adviser's website at *www.amplifyetfs.com.*

Suitability

NYSE Arca Rule 9.2–E(a) provides that every ETP Holder shall use due diligence to learn the essential facts relative to every customer, every order, every account accepted or carried by such ETP Holder and every person holding power of attorney over any account accepted or carried by such ETP Holder.

In recommending to a customer the purchase, sale or exchange of any security, an ETP Holder shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of any facts disclosed by the customer as to his or her other security holdings, financial situation and needs.

Availability of Information

The Trust's website (*www.amplifyetfs.com*), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The website will include additional quantitative information updated on a daily basis, including, for the Fund: (1) The prior business day's reported NAV, mid-point of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price''),[22] and a calculation of the premium and discount of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.

On each business day, before commencement of trading in Shares in the Core Trading Session[23] on the Exchange, the Trust will disclose on its website the following information regarding each portfolio holding, as applicable to the type of holding: Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding); the identity of the security, index or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; market value of the holding; and the percentage weighting of the holding in the Fund's portfolio. The website information will be publicly available at no charge.

In addition, a portfolio composition file, which will include the security names and quantities of securities and other assets required to be delivered in exchange for the Fund's Shares, together with estimates and actual cash components, will be publicly disseminated prior to the opening of the Exchange via the National Securities Clearing Corporation. The portfolio will represent one Creation Unit of the Fund. Authorized Participants may refer to the portfolio composition file for information regarding LEAPS, U.S. Treasury Securities, money market instruments, and any other instrument that may comprise the Fund's portfolio on a given day.

Investors can also obtain the Trust's Statement of Additional Information (''SAI''), the Fund's Shareholder Reports, and its Form N–CSR, filed twice a year. The Trust's SAI and Shareholder Reports will be available free upon request from the Trust, and those documents and the Form N–CSR may be viewed on screen or downloaded from the Commission's website at *www.sec.gov.* Information regarding market price and trading volume for the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via the Consolidated Tape Association (''CTA'') high-speed line. Quotation and last sale information for LEAPS will be available via the Options Price Reporting Authority. Price information on fixed income portfolio securities, including U.S. Treasury securities, cash equivalents and other short term instruments is available from major broker-dealer firms or market data vendors, as well as from automated quotation systems, published or other public sources, or online information services. In addition, the value of the Index will be published by one or more major market data vendors every 15 seconds during the NYSE Arca Core Trading Session. Information about the Index constituents, the weighting of the constituents, the Index's methodology and the Index's rules will be available on the Index Provider's website.

In addition, the IIV as defined in NYSE Arca Rule 5.2–E (j)(3), Commentary .02 (c) will be widely disseminated at least every 15 seconds during the Core Trading Session by one or more major market data vendors.[24]

[22] The Bid/Ask Price of the Fund's Shares will be determined using the midpoint of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

[23] The Core Trading Session is 9:30 a.m. to 4:00 p.m. Eastern Time (''E.T'').

[24] Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available IIV's taken from the CTA or other data feeds.

All Fund holdings will be included in calculating the IIV.

The dissemination of the IIV is intended to allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and to approximate that value throughout the trading day. The intra-day, closing and settlement prices of the portfolio securities and other Fund investments will also be readily available from the exchanges trading such instruments, automated quotation systems, published or other public sources. The intra-day, closing and settlement prices of treasuries and money market instruments will be readily available from published and other public sources or on-line information services.

Initial and Continued Listing

The Shares will conform to the initial and continued listing criteria under NYSE Arca Rules 5.2–E(j)(3) and 5.5–E(g)(2), except that the Index will not meet the requirements of NYSE Arca Rule 5.2–E(j)(3), Commentary .02(a)(1) in that the Index will include of SPY LEAPS. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A–3 [25] under the Act, as provided by NYSE Arca Rule 5.3–E. A minimum of 100,000 Shares for the Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily every day the New York Stock Exchange is open and that the NAV and will be made available to all market participants at the same time.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) [26] that an exchange have rules that are 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, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Commentary .02 to Rule 5.2–E(j)(3) and NYSE Arca Rule 5.2–E(g)(2) [sic], except that the Index includes SPY LEAPS, rather than only Fixed Income Securities. Under normal market conditions, the Fund will invest at least 80% of its total assets in the securities that comprise the Index, which will be composed of U.S. Treasury securities and SPY LEAPS.

As noted above, SPY LEAPS are highly liquid and derive their value from the actively traded S&P 500 Index components. The Exchange believes the highly regulated options markets and the broad base and scope of the S&P 500 Index make securities that derive their value from that index less susceptible to market manipulation in view of market capitalization and liquidity of the S&P 500 Index components, price and quote transparency, and arbitrage opportunities.

The Exchange believes that the liquidity of the markets for U.S. Treasury securities in the Fund's portfolio, S&P 500 Index securities, and SPY LEAPS is sufficiently great to deter fraudulent or manipulative acts associated with the price of a Fund's Shares. The Exchange also believes that such liquidity is sufficient to support the creation and redemption mechanism.

The Shares will be subject to the existing trading surveillances administered by the Exchange or FINRA on behalf of the Exchange, which are designed to deter and detect violations of Exchange rules and applicable federal securities laws relating to trading on the Exchange. FINRA and the Exchange, as applicable, may each obtain information via ISG from other exchanges that are members of ISG, and in the case of the Exchange, from other market or entities with which the Exchange has entered into a comprehensive surveillance sharing agreement.

The Index Provider is registered as an investment adviser but is not registered as a broker-dealer or affiliated with a broker-dealer. The Adviser is not registered as a broker-dealer but is affiliated with a broker-dealer and has implemented and will maintain a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Fund's portfolio. The Sub-Adviser is not registered as a broker-dealer or affiliated with a broker-dealer. In the event that (a) the Adviser or Sub-Adviser becomes registered as a broker-dealer or newly affiliated with another broker-dealer; or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily every day the New York Stock Exchange is open, and that the NAV will be made available to all market participants at the same time. In addition, a large amount of publicly available information will be publicly available regarding the Fund and the Shares, thereby promoting market transparency. Moreover, the IIV will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session.

On each business day, before commencement of trading in the Shares in the Core Trading Session on the Exchange, the Fund will disclose on its website the portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotations and last sale information will be available via the CTA high-speed line.

Information relating to U.S. exchange-listed options is available via the Options Price Reporting Authority. Quotation and last sale information for the Shares will be available via the CTA high-speed line. Quotation and last sale information for U.S. exchange-listed options contracts cleared by the OCC is available via the Options Price Reporting Authority. Quotation information for LEAPS is available directly from the exchange on which they are traded. The intra-day, closing and settlement prices of exchange-traded options will be readily available from the options exchanges, automated quotation systems, published or other public sources, or online information services such as Bloomberg or Reuters. Such price information on fixed income portfolio securities, including U.S. Treasury securities, cash equivalents and other short term instruments is available from major broker-dealer firms or market data vendors, as well as from automated quotation systems, published or other public sources, or online information services.

[25] *See* 17 CFR 240.10A–3.

[26] 15 U.S.C. 78f(b)(5).

The website for the Fund will include the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Moreover, prior to commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading the Shares inadvisable. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the IIV, the Fund's portfolio, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Shares will be subject to the existing trading surveillances administered by the Exchange or FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange. The Exchange or FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and LEAPS with other market and other entities that are members of ISG, and the Exchange or FINRA, on behalf of the Exchange, may obtain trading information in the Shares and LEAPS from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and LEAPS from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the IIV, and quotation and last sale information for the Shares.

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 purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of an additional type of Units that can hold options contracts and that will enhance competition among market participants, to the benefit of investors and the marketplace.

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 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 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, as modified by Amendment No. 1, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2018–57 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2018–57. 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–NYSEArca–2018–57, and should be submitted on or before September 10, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2018–17832 Filed 8–17–18; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83841; File No. SR–ISE–2018–72]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees at Section II

August 14, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 30, 2018, Nasdaq ISE, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[27] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Schedule of Fees at Section II entitled ''Complex Orders Fees and Rebates.''

While the changes proposed herein are effective upon filing, the Exchange has designated the amendments become operative on August 1, 2018.

The text of the proposed rule change is available on the Exchange's website at *http://ise.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Schedule of Fees at Section II entitled ''Complex Orders Fees and Rebates.'' Specifically, the Exchange is proposing to lower the qualifying Complex Order Volume in Tiers 4–7, as explained in more detail below, to attract a greater amount of Priority Customer [3] Complex Order flow on ISE by paying the same rebates, but requiring less qualifying volume in those tiers.

Currently, the Exchange has a pricing structure in place for Complex Orders that provides rebates to Priority Customer Complex Orders in order to encourage Members to bring that order flow to the Exchange. Specifically, Priority Customer Complex Orders are provided rebates in Select Symbols [4] and Non-Select Symbols.[5] Rebates are provided per contract per leg if the order trades with non-Priority Customer orders in the Complex Order Book or trades with quotes and orders on the regular order book. Customer Complex Order rebates are paid a rebate based on a percentage of industry volume. Priority Customer Complex Tiers are based on Total Affiliated Member Complex Order Volume (excluding Crossing Orders and Responses to Crossing Orders) and are calculated as a percentage of Customer Total Consolidated Volume. All Complex Order volume executed on the Exchange, including volume executed by Affiliated Members, is included in the volume calculation, except for volume executed as Crossing Orders and Responses to Crossing Orders.[6] Currently, there are nine Priority Customer Complex Order Tiers based on the percentage of industry volume calculation:

Tier 1	0.000%–0.200%	($0.25)	($0.40)
Tier 2	Above 0.200%–0.400%	(0.30)	(0.55)
Tier 3	Above 0.400%–0.600%	(0.35)	(0.70)
Tier 4	Above 0.600%–0.800%	(0.40)	(0.75)
Tier 5	Above 0.800%–1.000%	(0.45)	(0.80)
Tier 6	Above 1.000%–1.600%	(0.46)	(0.80)
Tier 7	Above 1.600%–2.000%	(0.48)	(0.80)
Tier 8	Above 2.000%–3.250%	(0.50)	(0.85)
Tier 9	Above 3.250%	(0.50)	(0.85)

At this time the Exchange proposes to amend the Total Affiliated Member Complex Order Volume, which excludes Crossing Orders and Responses to Crossing Orders, that are calculated as a percentage of Customer Total Consolidated Volume in Tiers 4–7. Today, Tier 4 requires Total Affiliated Member Complex Order Volume between 0.600% and 0.800%. The Exchange is amending Tier 4 to require Total Affiliated Member Complex Order Volume between 0.600% and 0.750%. Today, Tier 5 requires Total Affiliated Member Complex Order Volume between 0.800% and 1.000%. The Exchange is amending Tier 5 to require Total Affiliated Member Complex Order Volume between 0.750% and 1.000%. So, today a portion of Complex Order volume which qualified for Tier 4 volume would qualify as Tier 5 volume pursuant to this proposal. Today, Tier 6 requires Total Affiliated Member Complex Order Volume between 1.000%–1.600%. The Exchange is amending Tier 6 to require Total Affiliated Member Complex Order Volume between 1.000%–1.500%. So, today a portion of Complex Order volume which qualified as Tier 5 volume would qualify for Tier 6 volume pursuant to this proposal. Today, Tier 7 requires Total Affiliated Member Complex Order Volume between 1.600%–2.000%. The Exchange is amending Tier 7 to require Total Affiliated Member Complex Order Volume between 1.500%–2.000%. So, today a portion of Complex Order volume which qualified as Tier 6 volume would qualify as Tier 7 volume pursuant to this proposal. Members may earn greater rebates in Select and Non-Select Symbols simply by sending in certain of the same volume in Tiers 4–7 today, provided it would qualify for the higher tier pursuant to this proposal which lowers volume in Tier 4–7. No changes are proposed to Tier 1–3 or Tiers 8 and 9. No changes are proposed to any corresponding rebates in either Select or Non-Select Symbols.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b)

[3] A ''Priority Customer'' is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s), as defined in Nasdaq ISE Rule 100(a)(37A). Unless otherwise noted, when used in this Schedule of Fees the term ''Priority Customer'' includes ''Retail'' as defined below.

[4] ''Select Symbols'' are options overlying all symbols listed on the Nasdaq ISE that are in the Penny Pilot Program.

[5] ''Non-Select Symbols'' are options overlying all symbols excluding Select Symbols. For Non-Select Symbols, no rebates will be paid for orders in NDX, NQX and MNX

[6] An ''Affiliated Member'' is a Member that shares at least 75% common ownership with a particular Member as reflected on the Member's Form BD, Schedule A. Furthermore, ''Customer Total Consolidated Volume'' means the total national volume cleared at The Options Clearing Corporation in the Customer range in equity and ETF options in that month.

of the Act,[7] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed changes to the Priority Customer Complex Order Tiers are reasonable as these changes are designed to incentivize Members to trade Complex Orders, and, in particular Priority Customer Complex Orders, on the Exchange. The Exchange's proposal, which lowers the qualifying Total Affiliated Member Complex Order Volume in Tiers 4–7, is intended to encourage Members to submit the same or a greater amount of Priority Customer Complex Order flow to obtain a higher rebate.

In addition, the Exchange believes that the proposed changes are equitable and not unfairly discriminatory as these changes are designed to encourage Members to transact more Complex Order flow, and in particular, Priority Customer Complex Orders, on ISE. The Exchange does not believe that it is unfairly discriminatory to provide rebates only to Priority Customer Complex Orders as this type of order flow enhances liquidity on the Exchange for the benefit of all market participants by providing more trading opportunities, which attracts Market Makers. The Exchange believes that the proposed changes to the Priority Customer Complex Tiers will benefit all market participants that trade on ISE by increasing their opportunities to trade and earn rebates.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed changes will enhance both inter-market and intra-market competition by increasing opportunities for Members to obtain rebates by transacting Priority Customer Complex Orders. The Exchange believes that the proposed fees and rebates remain competitive with those on other options markets, and will continue to attract order flow to the Exchange, thereby encouraging additional volume and liquidity to the benefit of all market participants. Priority Customer Complex Order flow enhances liquidity on the Exchange for the benefit of all market participants by providing more trading opportunities, which attracts Market Makers.

The Exchange operates in a highly competitive market in which market participants can readily direct their order flow to competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and rebates to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed fee changes reflect this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[9] and Rule 19b–4(f)(2)[10] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–ISE–2018–72 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2018–72. 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–ISE–2018–72 and should be submitted on or before September 10, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2018–17828 Filed 8–17–18; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4) and (5).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83843; File No. SR–NYSENAT–2018–18]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Schedule of Fees and Rebates

August 14, 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 August 1, 2018, NYSE National, Inc. (''Exchange'' or ''NYSE National'') 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Schedule of Fees and Rebates to specify that an ETP Holder may request that the Exchange aggregate its eligible activity with activity of its ETP Holder affiliates for purposes of charges or credits based on volume. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Schedule of Fees and Rebates to specify that an ETP Holder may request that the Exchange aggregate its eligible activity with activity of its ETP Holder affiliates for purposes of charges or credits based on volume. As noted below, the proposed provision is based on similar provisions in the price lists of the Exchange's affiliates New York Stock Exchange LLC (''NYSE''), NYSE Arca, Inc. (''NYSE Arca''), and NYSE American Equities (''NYSE American'') (together, the ''Exchange Affiliates'').[4]

The Exchange proposes to amend its Schedule of Fees and Rebates to specify that an ETP Holder may request that the Exchange aggregate its eligible activity with eligible activity of its ETP Holder affiliates for purposes of charges or credits based on volume. The proposed rule change is based on the rules of the Exchange Affiliates, which contain substantially the same language.[5] The Exchange notes that this type of provision is also common among many other exchanges.[6]

As proposed, for purposes of applying any provision of the Exchange's Schedule of Fees and Rebates where the charge assessed, or credit provided, by the Exchange depends on the volume of an ETP Holder's activity (*i.e.,* where a volume threshold or volume percentage is required to obtain the pricing), an ETP Holder may request that the Exchange aggregate its eligible activity with eligible activity of its ETP Holder affiliates. The Exchange further proposes that an ETP Holder requesting aggregation of eligible affiliate activity would be required to (1) certify to the Exchange which affiliate(s) it seeks to aggregate prior to receiving approval for aggregation, and (2) inform the Exchange immediately of any event that causes an entity to cease being an affiliate(s). The Exchange would review available information regarding the entities and reserves the right to request additional information to verify the affiliate status of an entity. As further proposed, the Exchange would approve a request, unless it determines that the certificate is not accurate.

The Exchange also proposes that if two or more ETP Holders become affiliated on or prior to the sixteenth day of a month, and submit the required request for aggregation on or prior to the twenty-second day of the month, an approval of the request would be deemed to be effective as of the first day of that month. If two or more ETP Holders become affiliated after the sixteenth day of a month, or submit a request for aggregation after the twenty second day of the month, an approval of the request would be deemed to be effective as of the first day of the next calendar month. The Exchange believes that this requirement, which is also similar to requirements of the Exchange Affiliates, would be a fair and objective way to apply the aggregation rule to fees and streamline the billing process. The Exchange further proposes to provide that for purposes of applying any provision of the Schedule of Fees and Rebates where the charge assessed, or credit provided, by the Exchange depends upon the volume of an ETP Holder's activity, references to an entity would be deemed to include the entity and its affiliates that have been approved for aggregation. The Exchange proposes to provide that ETP Holders may not aggregate volume where the Schedule of Fees and Rebates specifies that aggregation is not permitted.[7]

Finally, the Exchange proposes that for purposes of the Schedule of Fees and Rebates, the term ''affiliate'' would mean any ETP Holder under 75% common ownership or control of that ETP Holder. Once again, this is consistent with the rules of the Exchange Affiliates and other exchanges.[8]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[10] in particular, because it provides for the equitable allocation of reasonable dues,

[4] *See* New York Stock Exchange Price List 2018, available at *https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf;* NYSE Arca Equities Fees and Charges, available at *https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf;* and the NYSE American Equities Price List, available at *https://www.nyse.com/publicdocs/nyse/markets/nyse-american/NYSE_America_Equities_Price_List.pdf.*

[5] *See* note 4, *supra.* The Exchange proposes to omit a reference to Designated Market Makers or ''DMMs'' found in price lists of the Exchange Affiliates because the Exchange does not currently have DMMs.

[6] *See, e.g.,* NASDAQ Stock Market Rule 7027, NASDAQ Options Market Rules at Chapter XV, and the NASDAQ PHLX LLC Pricing Schedule, available at *http://nasdaqphlx.cchwallstreet.com/NASDAQPHLXTools/PlatformViewer.asp?selectednode=chp_1_5_2&manual=%2Fnasdaqomxphlx%2Fphlx%2Fphlx-rulesbrd%2F.*

[7] *See* note 4, *supra.*

[8] *See* note 4, *supra; see also, e.g.,* NASDAQ Rule 7027(c).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4) & (5).

fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers, and because it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change establishes a reasonable and clear process for the Exchange to treat affiliated ETP Holders for purposes of assessing charges or credits that are based on volume. The provision is equitable because all ETP Holders seeking to aggregate their activity are subject to the same parameters, in accordance with a standard that recognizes an affiliation as of the month's beginning or close in time to when the affiliation occurs, provided the ETP Holder submits a timely request. Moreover, the proposed billing aggregation language is substantially similar to aggregation language adopted by the NYSE Affiliates and other exchanges.[11]

The Exchange notes that the proposal would serve to reduce disparity of treatment between ETP Holders with regard to the pricing of different services and reduce any potential for confusion on how activity can be aggregated. The Exchange believes that the proposed rule change avoids disparate treatment of ETP Holders that have divided their various business activities between separate corporate entities as compared to ETP Holders that operate those business activities within a single corporate entity. The Exchange further notes that the proposed rule change is reasonable and is designed to remove impediments to and perfect the mechanism of a free and open market by harmonizing the manner by which the Exchanges permits ETP Holders to aggregate volume with other exchanges. As noted, the Exchange Affiliates and other markets all have the same standard that the Exchange is proposing to adopt.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[12] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change, which would apply equally to all ETP Holders, would incent submission of order flow to a public exchange by permitting the Exchange to apply price discounts to ETP Holders that have requested aggregation with an affiliated ETP Holder and is substantially similar to rules adopted by the Exchange Affiliates as well as other exchanges. Because the market for order execution and routing is extremely competitive, ETP Holders may readily opt to disfavor the Exchange if they believe that alternatives offer them better value. The Exchange does not believe the proposed changes will impair the ability of ETP Holders or competing order execution venues to maintain their competitive standing in the financial markets. Moreover, because the Exchange does not propose to alter or modify specific fees or credits applicable to ETP Holders, the proposal does not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[13] and Rule 19b–4(f)(6) thereunder.[14] 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[15]

A proposed rule change filed under Rule 19b–4(f)(6)[16] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[17] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. According to the Exchange, waiving the 30-day operative delay would be consistent with the protection of investors and the public interest because it would enable the Exchange to harmonize its rules with respect to aggregation of affiliate activity with the rules of its affiliates without delay and, as a result, reduce potential confusion for investors. The Exchange explains that as it is harmonizing its Schedule of Fees and Rebates with the requirements in the price lists of its affiliates as well as other exchanges, the proposed change does not present any new or novel issues. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.[18]

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)[19] 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

[11] *See* notes 5–6, *supra.*

[12] 15 U.S.C. 78f(b)(8).

[13] 15 U.S.C. 78s(b)(3)(A)(iii).

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 15 U.S.C. 78s(b)(2)(B).

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSENAT–2018–18 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–NYSENAT–2018–18. 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; the Commission does not edit personal identifying information from submissions. 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–NYSENAT–2018–18 and should be submitted on or before September 10, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2018–17830 Filed 8–17–18; 8:45 am]

BILLING CODE 8011–01–P

[20] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 10512]

Certification Related to the Central Government of Haiti Under the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2018

Pursuant to section 7045(c) (1) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2018 (Div. K, Pub. L. 115–141), I hereby certify that the central Government of Haiti is taking effective steps, which are in addition to steps taken since the certification and report submitted on August 3, 2017, if applicable, to:

• Strengthen the rule of law in Haiti, including by selecting judges in a transparent manner based on merit; reducing pre-trial detention; respecting the independence of the judiciary; and improving governance by implementing reforms to increase transparency and accountability, including through the penal and criminal codes;

• Combat corruption, including by implementing the anti-corruption law enacted in 2014 and prosecuting corrupt officials;

• Increase government revenues, including by implementing tax reforms, and increase expenditures on public services; and

• Resolve commercial disputes between United States entities and the Government of Haiti.

Dated: August 13, 2018.

Michael Pompeo,

Secretary of State.

[FR Doc. 2018–17920 Filed 8–17–18; 8:45 am]

BILLING CODE 4710–29–P

TENNESSEE VALLEY AUTHORITY

[Meeting No. 18–03]

Sunshine Act Meetings

TIME AND DATE: 9:30 a.m. (ET) on August 22, 2018.

PLACE: TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

MATTERS TO BE CONSIDERED: The TVA Board of Directors will hold a public meeting. The public may comment on any agenda item or subject at the *public listening session*. Following the end of the public listening session, the meeting will be called to order to consider the agenda items listed below. On-site registration will be available until 15 minutes before the public listening session begins at 9:30 a.m. (ET). Preregistered speakers will address the Board first. TVA management will answer questions from the news media following the Board meeting.

Agenda

1. Approval of minutes of the May 10, 2018, Board Meeting
2. Report from President and CEO
3. Report of the Finance, Rates, and Portfolio Committee
   A. FY 2019 Financial Plan and Budget
   B. Rate adjustment
   C. Financing authority
   D. Nuclear fuel supply contracts
   E. Integrated Supply Program
4. Report of the Audit, Risk, and Regulation Committee
   A. FY 2019 external auditor selection
5. Report of the External Relations Committee
   A. Public Land Protection Policy
6. Report of the Nuclear Oversight Committee
7. Report of the People and Performance Committee
   A. Corporate goals
   B. Long-term incentive plan revisions
   C. Health savings account contract

CONTACT PERSON FOR MORE INFORMATION: Please call TVA Media Relations at (865) 632–6000, Knoxville, Tennessee. People who plan to attend the meeting and have special needs should call (865) 632–6000. Anyone who wishes to comment on any of the agenda in writing may send their comments to: TVA Board of Directors, Board Agenda Comments, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

Dated: August 15, 2018.

Sherry A. Quirk,

General Counsel.

[FR Doc. 2018–17969 Filed 8–16–18; 11:15 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Availability of Noise Compatibility Program for Chicago Executive Airport, Wheeling and Prospect Heights, Illinois

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the updated noise exposure maps submitted by the Chicago Executive Airport under the provisions of the (Aviation Safety and Noise Abatement Act) and Title 14 Code of Federal Regulations (CFR) Part 150

are in compliance with applicable requirements.

DATES: This notice is effective August 20, 2018, and applicable August 9, 2018. The public comment period ends September 10, 2018.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Hanson, Environmental Protection Specialist, CHI–603, Federal Aviation Administration, Chicago Airport District Office, 2300 East Devon Avenue, Des Plaines, IL 60018. Telephone number: 847–294–7354. Email: *amy.hanson@faa.gov.*

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the updated noise exposure maps submitted for Chicago Executive Airport are in compliance with applicable requirements of14 CFR part 150, effective (Note 1). Under 49 U.S.C. 47503 of the Aviation Safety and Noise Abatement Act (hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport. An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of 14 CFR part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA has completed its review of the updated noise exposure maps and accompanying documentation submitted by Chicago Executive Airport. The documentation that constitutes the ''noise exposure maps'' as defined in section 150.7 of Part 150 includes: Figure D3, Existing (2016) Noise Exposure Map; Figure D4, Future (2022) Noise Exposure Map; Table B2, Summary Annual and Aircraft Operations Forecast; Figure D1, Arrival Flight Tracks; Figure D2, Departure Flight Tracks; Table E1, Existing Land Use Within Existing Noise Contours, 2016; and Table E2, Existing Land Use Within Existing Noise Future Noise Contours.

The FAA has determined that these updated noise exposure maps and accompanying documentation are in compliance with applicable requirements. This determination is effective on August 9, 2018. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the full updated noise exposure map documentation and of the FAA's evaluation of the maps are available for examination, upon prior appointment during normal business hours, at the following locations:

Chicago Executive Airport, 1020 South Plant Road, Wheeling, Illinois 60090.

Federal Aviation Administration, Chicago Airports District Office, 2300 E Devon, Suite 320, Des Plaines, IL 60018.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Des Plaines, IL, August 9, 2018.

Deb Bartell,

Manager, Chicago Airports District Office, FAA Great Lakes Region.

[FR Doc. 2018–17938 Filed 8–17–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement, Washington County, Utah

AGENCY: Federal Highway Administration (FHWA), Department of Transportation.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The FHWA, on behalf of the Utah Department of Transportation (UDOT), is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared to evaluate proposed courses of action to satisfy transportation and safety goals at Interstate 15 (I–15)/Green Spring Drive Interchange (Exit 10) and the surrounding roadway system in Washington City within Washington County, Utah.

DATES: A scoping, purpose and need, and alternatives meeting is scheduled for August 28, 2018 from 4:30 to 7:30 p.m. at the Washington City Community Center in Washington, Utah. A formal comment period will also be held from August 17 to September 14, 2018.

ADDRESSES: Washington City Community Center, 350 Community Center Drive, Washington, UT 84780.

FOR FURTHER INFORMATION CONTACT: Elisa Albury, Environmental Program Manager, Environmental Services Division, UDOT 4501 South 2700 West, P.O. Box 148450, Salt Lake City, UT 84114–8450; Telephone: (801) 834–5284, Email: *ealbury@utah.gov.* Kim Manwill, MP11 Environmental Study Project Manager, UDOT Region 4, 708 South 100 West, Richfield, UT 84701; Telephone (435) 896–0733, Email: *kmanwill@utah.gov.* UDOT's normal business hours are 8:00 a.m. to 5:00 p.m. (Mountain Standard Time), Monday through Friday, except State and Federal holidays.

SUPPLEMENTARY INFORMATION: The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being or have been carried out by UDOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated January 17, 2017 and executed by FHWA and UDOT. UDOT, as the assigned National Environmental Policy

Act (NEPA) agency, will prepare an EIS for a proposal to satisfy transportation and safety goals at Interstate 15 (I–15)/Green Spring Drive (Exit 10) Interchange and the surrounding roadway system in Washington County within Washington City, Utah. The proposed project study area extends east and west along I–15 between the I–15/Green Spring Drive Interchange (Exit 10) and I–15/Washington Parkway Interchange (Exit 13). The extent of the proposed study area is generally bound by Buena Vista Boulevard to the north and Telegraph Street to the south. The proposed logical termini for this study are I–15 Exit 10 and Exit 13, as well as Buena Vista Boulevard, and Telegraph Street. Each of these streets are major arterials that provide north-south and east-west travel within the study area.

The environmental review process for this project began in the summer of 2017. An information meeting was held August 29, 2017 to gather public input related to the transportation needs within the study area and inform the community of the environmental process. Based on community concerns regarding potential outcomes of this study, UDOT decided the appropriate level of environmental review needed for this project would be best provided by proceeding with an EIS.

As part of the EIS, UDOT will consider a range of alternatives based on the purpose and need of the project and taking into account agency and public input. The currently contemplated alternatives include: (1) Taking no action (no-build); (2) making the existing system operate more efficiently; (3) adding capacity to the system; (4) dispersing of traffic more evenly throughout the system; (5) reducing traffic in the system; (6) combinations of any of the above; and (7) other reasonable alternatives if identified during the scoping process. Alternatives will be refined based on input from agencies and the public during the initial coordination/scoping period and agency and public involvement opportunities. Alternatives that do not meet the project purpose and need or that are otherwise not reasonable will not be carried forward for detailed consideration.

A Coordination Plan is being prepared to define the agency and public participation procedure for the environmental review process. The plan will outline: (1) How agencies and the public will provide input during the scoping process; (2) the development of the purpose and need; and (3) alternatives development.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, Participating, and local agencies, Native American tribes, and to private organizations and citizens who have previously expressed or are known to have an interest in this proposal. A public scoping, purpose and need, and alternatives meeting is scheduled for August 28, 2018 from 4:30 to 7:30 p.m. at the Washington City Community Center in Washington, Utah. Public notice will be given of the time and place of the meeting. Information regarding this meeting and the project may also be obtained through a public website maintained by UDOT at *www.mp11.org.*

During the NEPA process, other public meetings may be held as appropriate to allow the public, as well as Federal, State, and local agencies, and tribes, to provide comments on the purpose of and need for the project, potential alternatives, and social, economic, and environmental issues of concern. In addition, a public hearing will be held following the release of the Draft EIS. Public notice advertisements and direct mailings will notify interested parties of the time and place of any public meetings and of the public hearing. The Draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to UDOT at the mail or email address provided above by September 14, 2018. For additional information please visit the project website at *www.mp11.org.* Information requested or comments can also be provided by email to *info@mp11.org.*

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: August 9, 2018.

Ivan Marrero,

Division Administrator, Federal Highway Administration, Salt Lake City, Utah.

[FR Doc. 2018–17895 Filed 8–17–18; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2018–0060]

Petition for Approval

Under part 211 of Title 49 Code of Federal Regulations (CFR), this provides the public notice that by a letter dated June 19, 2018, the East Penn, Middletown New Jersey, and Tyburn Railroads (Petitioners) petitioned the Federal Railroad Administration (FRA) seeking approval pursuant to 49 CFR 220.307, *Use of railroad-supplied electronic devices.* FRA assigned the petition Docket Number FRA–2018–0060.

Specifically, Petitioners seek FRA's approval to allow an operating employee to use the camera on an authorized railroad-supplied electronic device (a camera phone) for authorized business purposes, such as photographing a safety hazard, mechanical, and/or track defects. A railroad operating employee may only use a railroad-supplied electronic device for an authorized business purpose, involving the taking of a photograph or video, as specified by the railroad in writing, if approved by FRA. *See* 49 CFR 220.307(a), *General restriction.*

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE, W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Website: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.

• *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, W12–140, Washington, DC 20590.

• *Hand Delivery:* 1200 New Jersey Avenue SE, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by October 4, 2018 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacyNotice* for the privacy notice of *regulations.gov*.

Issued in Washington, DC, on August 15, 2018.

John K. Alexy,

Deputy Associate Administrator, Office of Safety.

[FR Doc. 2018–17890 Filed 8–17–18; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2018–0019; Notice 2]

Reports, Forms, and Record Keeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Request for public comment on proposed collection of information.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden.

DATES: Comments must be submitted on or before September 19, 2018.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance (NEF–230), National Highway Traffic Safety Administration, West Building 4th Floor, Room W45–205, 1200 New Jersey Avenue SE, Washington, DC 20590. Mr. Sachs' telephone number is (202) 366–3151.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: Consolidated Labeling Requirements for 49 CFR parts 565 Vehicle Identification Number (VIN) Requirements, and 567 Certification.

OMB Number: 2127–0510.

Type of Request: Reinstatement of a Previously Approved Collection.

The **Federal Register** Notice soliciting public comment on the ICR, with a 60-day comment period was published on February 28, 2018, at 83 FR 8732.

Abstract:

Part 565

The regulations in part 565 specify the format, contents, and physical requirements for a vehicle identification number (VIN) system and its installation to simplify vehicle identification information retrieval and to increase the accuracy and efficiency of vehicle recall campaigns. The regulations require each vehicle manufactured in one stage to have a VIN that is assigned by the vehicle's manufacturer. Each vehicle manufactured in more than one stage is to have a VIN assigned by the incomplete vehicle manufacturer. Each VIN must consist of 17 characters, including a check digit, in the ninth position, with the purpose of verifying the accuracy of any VIN transcription. The VIN must also incorporate the world manufacturer identifier (WMI) assigned to the manufacturer by the competent authority in the country where the manufacturer is located. The WMI occupies the first three characters of the VIN for manufacturers that produce 1,000 or more vehicles of a specified type within a model year, and positions 1, 2, 3, 12, 13, and 14 of VINs assigned by manufacturers that produce less than 1,000 vehicles of a specified type per model year. The remaining characters of the VIN describe various vehicle attributes, such as make, model, and type, which vary depending on the vehicle's type classification (*i.e.* passenger car, multipurpose passenger vehicle, truck, bus, trailer, motorcycle, low-speed vehicle), and identify the vehicle's model year, plant code, and sequential production number. NHTSA has contracted with SAE International of Warrendale, Pennsylvania, to coordinate the assignment of WMIs to manufacturers in the United States. Each manufacturer of vehicles subject to the requirements of part 565 must submit, either directly or through an agent, the unique identifier for each make and type of vehicle it manufactures at least 60 days before affixing the first VIN using the identifier. Manufacturers are also required to submit to NHTSA, information necessary to decipher the characters contained in their VINs, including amendments to that information, at least 60 days prior to offering for sale the first vehicle identified by a VIN containing that information or if information concerning vehicle characteristics sufficient to specify the VIN code is unavailable to the manufacturer by that date, then within one week after that information first becomes available. With changes implemented in 2015, manufacturers have been able to make these submissions using an online portal on the agency's website at *https://vpic.nhtsa.dot.gov.*

Part 567

The regulations in part 567 specify the content and location of, and other requirements for, the certification label to be affixed to a motor vehicle, as required by the National Traffic and Motor Vehicle Safety Act, as amended (the Vehicle Safety Act) (49 U.S.C. 30115) and the Motor Vehicle Information and Cost Savings Act, as amended (the Cost Savings Act) (49 U.S.C. 30254 and 33109), to address certification-related duties and liabilities, and to provide the consumer with information to assist him or her in determining which of the Federal Motor Vehicle Safety Standards (FMVSS) (as found in 49 CFR part 571), Bumper Standards (as found in 49 CFR part 581), and Federal Theft Prevention Standards (as found in 49 CFR part 541) are applicable to the vehicle. The regulations pertain to manufacturers of motor vehicles to which one or more standards are applicable, including persons who alter such vehicles prior to their first retail sale, and to Registered Importers of vehicles not originally manufactured to comply with all applicable FMVSS that are determined eligible for importation by NHTSA, based on the vehicles' capability of being modified to conform to those standards. The regulations require each manufacturer to affix to each vehicle, in a prescribed location, a label that, among other things, identifies the vehicle's manufacturer (defined as the

person who actually assembles the vehicle), the vehicle's date of manufacture, and the statement that the vehicle complies with all applicable FMVSS and, where applicable, Bumper and Theft Prevention Standards in effect on the date of manufacture. The label must also include the vehicle's gross vehicle and gross axle weight ratings (GVWR and GAWRs), vehicle identification number, and vehicle type classification (*i.e.,* passenger car, multipurpose passenger vehicle, truck, bus, trailer, motorcycle, low-speed vehicle). The regulations specify other labeling requirements for incomplete vehicle, intermediate, and final-stage manufacturers of vehicles built in two or more stages, such as commercial trucks that are built by adding work performing components, such as a cargo box or cement mixer, to a previously manufactured chassis or chassis-cab, and to persons who alter previously certified vehicles, other than by the addition, substitution, or removal of readily attachable components such as mirrors or tire and rim assemblies, or minor finishing operation such as painting, before the first purchase of the vehicle for purposes other than resale.

Affected Public: Motor vehicle manufacturers, including incomplete vehicle manufacturers and intermediate and final-stage manufacturers of vehicles built in two or more stages, vehicle alterers, and Registered Importers of motor vehicles that are not originally manufactured to comply with all applicable FMVSS.

Estimated Total Annual Burden: 733 hours and $21,990 for supplying required VIN-deciphering information to NHTSA under part 565; 88,000 hours and $1,760,000 for meeting the labeling requirements of part 567.

Addresses: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, Attention NHTSA Desk Officer.

Comments Are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; the accuracy of the Agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is most effective if OMB receives it within 30 days of publication.

Jeffrey M. Giuseppe,

Associate Administrator for Enforcement.

[FR Doc. 2018–17939 Filed 8–17–18; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF VETERANS AFFAIRS

Geriatrics and Gerontology Advisory Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act that a meeting of the Geriatrics and Gerontology Advisory Committee will be held on September 27–28, 2018, at the Department of Veterans Affairs in Washington, DC. On September 27th, the session will be held at 811 Vermont Avenue NW, in Room 3166/3168 and begin at 8:00 a.m. and end at 4:00 p.m. On September 28th, the session will be held at 810 Vermont Avenue NW, in Room 630 and begin at 8:00 a.m. and end at 12:00 p.m. A VANTs line has been established for both days: 1–800–767–1750, 78128#. This meeting is open to the public.

The purpose of the Committee is to provide advice to the Secretary of VA and the Under Secretary for Health on all matters pertaining to geriatrics and gerontology. The Committee assesses the capability of VA health care facilities and programs to meet the medical, psychological, and social needs of older Veterans, and evaluates VA programs designated as Geriatric Research, Education, and Clinical Centers.

The meeting will feature presentations and discussions on VA's geriatrics and extended care programs, aging research activities, updates on VA's employee staff working in the area of geriatrics (to include training, recruitment and retention approaches), Veterans Health Administration (VHA) strategic planning activities in geriatrics and extended care, recent VHA efforts regarding dementia and program advances in palliative care, and performance and oversight of VA Geriatric Research, Education, and Clinical Centers.

No time will be allocated at this meeting for receiving oral presentations from the public. Interested parties should provide written comments for review by the Committee to Mrs. Alejandra Paulovich, Designated Federal Officer, Geriatrics and Extended Care (10NC4), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, or via email at *Alejandra.Paulovich@va.gov.* Individuals who wish to attend the meeting should contact Ms. Paulovich at (202) 461–6016.

Dated: August 15, 2018.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2018–17894 Filed 8–17–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Homeless Veterans; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act that a meeting of the Advisory Committee on Homeless Veterans will be held September 26–27, 2018. The meeting sessions will take place at the War Memorial, 401 Van Ness Avenue, San Francisco, CA 94102. Sessions are open to the public, except when the Committee is conducting tours of homeless facilities, participating in off-site events, and participating in workgroup sessions. Tours of homeless facilities are closed, to protect Veterans' privacy and personal information.

The purpose of the Committee is to provide the Secretary of Veterans Affairs with an on-going assessment of the effectiveness of the policies, organizational structures, and services of VA in assisting Veterans at-risk and experiencing homelessness. The Committee shall assemble and review information related to the needs of homeless Veterans and provide advice on the most appropriate means of providing assistance to that subset of the Veteran population. The Committee will make recommendations to the Secretary regarding such activities.

On Wednesday, September 26, 2018, the Committee will convene an open session at the War Memorial, 401 Van Ness Avenue, San Francisco, CA 94102, from 8:00 a.m. to 5:00 p.m. (Pacific Standard Time—''PST''). The agenda will include briefings from officials at VA and other agencies regarding services for homeless Veterans. On Thursday, September 27, 2018, from 8:00 a.m. to 1:30 p.m. (PST), the Committee will convene closed sessions, as it tours homeless facilities at Stanford Hotel—250 Kearny Street San Francisco, CA 94108 and the Navigation Center—15th & Mission Streets, San Francisco, CA 94103.

Tours of homeless facilities are closed, to protect Veterans' privacy and personal information. The meeting

sessions on Thursday, September 27, 2018 are open to the public from 12:30 p.m. to 2:45 p.m. (PST). The agenda include briefings from officials at VA and other agencies. The Committee will also receive a briefing on the annual report of the Advisory Committee on Homeless Veterans and will then discuss topics for its upcoming annual report and recommendations to the Secretary of Veterans Affairs.

No time will be allocated at this meeting for receiving oral presentations from the public. Interested parties should provide written comments on issues affecting homeless Veterans for review by the Committee to Mr. Anthony Love, Designated Federal Officer, VHA Homeless Programs Office (10NC1), Department of Veterans Affairs, 811 Vermont Avenue NW, Washington, DC 20420, or via email at *Anthony.Love@va.gov*.

Members of the public who wish to attend should contact Leisa Davis and/or Daniella Waitschies of the Veterans Health Administration, Homeless Programs Office no later than August 24, 2018, at *Leisa.Davis@va.gov* (202) 632–8588 or *Daniella.Waitschies@va.gov* (909) 649–1148 to provide their name, professional affiliation, address, and phone number. There will also be a call-in number at 1–800–767–1750; Access Code: 50653#. Attendees who require reasonable accommodation should state so in their requests.

Dated: August 15, 2018.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2018–17885 Filed 8–17–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Veterans and Community Oversight and Engagement Board, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act the Veterans and Community Oversight and Engagement Board will meet on September 12–13, 2018. Details on times and locations for meetings are contained below. The meetings are open to the public.

The Board was established by the West Los Angeles Leasing Act of 2016 on September 29, 2016. The purpose of the Board is to provide advice and make recommendations to the Secretary of Veterans Affairs on: Identifying the goals of the community and Veteran partnership; improving services and outcomes for Veterans, members of the Armed Forces, and the families of such Veterans and members; and on the implementation of the Draft Master Plan approved by the Secretary on January 28, 2016, and on the creation and implementation of any successor master plans.

On Wednesday, September 12, 2018, the Board will convene an open session at 11301 Wilshire Boulevard, Building 500, Room 1281, Los Angeles, CA from 8:30 a.m. to 5:30 p.m. The agenda will include briefings from senior VA officials, and information briefings from the Greater Los Angeles Draft Master Plan Integrated Project Team. Lease holders currently existing on the WLA Campus will provide a comprehensive briefing to the Committee that focuses on the details of their current Lease. A public comment session will occur from 4:00 p.m. to 5:00 p.m. followed by a wrap up of Public Comment session.

On Thursday, September 13, 2018, the Board will convene an open session at the same location as shown above from 8:00 a.m. to 4:30 p.m. The Board will receive additional briefings from current Lease holders residing on the WLA Campus. Comprehensive briefings that focus on the details of their current Lease will be provided to the Board. The Board's subcommittees on Outreach and Community Engagement, Services and Outcomes, and Master Plan will report out on activities since the last meeting, and progress on any draft recommendations considered for forwarding to the SECVA. Individuals wishing to make public comments should contact Dr. Betty Moseley Brown at (202) 465–6199 or at *Betty.MoseleyBrown@va.gov* and are requested to submit a 1–2-page summary of their comments for inclusion in the official meeting record. In the interest of time, each speaker will be held to a 5-minute time limit.

Any member of the public seeking additional information should contact Mr. Eugene W. Skinner Jr. at (202) 631–7645 or at *Eugene.Skinner@va.gov.*

Dated: August 15, 2018.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2018–17904 Filed 8–17–18; 8:45 am]

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CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

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