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DEPARTMENT OF THE TREASURY

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12 CFR Part 4

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12 CFR Parts 208 and 211

[Docket No. R–1615]

RIN 7100–AF09

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 337 and 347

RIN 3064–AE76

Expanded Examination Cycle for Certain Small Insured Depository Institutions and U.S. Branches and Agencies of Foreign Banks

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Joint interim final rules and request for comments.

SUMMARY: The OCC, Board, and FDIC (collectively, the agencies) are jointly issuing and requesting public comment on interim final rules to implement section 210 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (Economic Growth Act), which was enacted on May 24, 2018. Section 210 of the Economic Growth Act amends section 10(d) of the Federal Deposit Insurance Act (FDI Act) to permit the agencies to examine qualifying insured depository institutions (IDIs) with under $3 billion in total assets not less than once during each 18-month period. Prior to enactment of the Economic Growth Act, qualifying IDIs with under $1 billion in total assets were eligible for an 18-month on-site examination cycle. The interim final rules generally would allow qualifying IDIs with under $3 billion in total assets to benefit from the extended 18-month examination schedule. In addition, the interim final rules make parallel changes to the agencies' regulations governing the on-site examination cycle for U.S. branches and agencies of foreign banks, consistent with the International Banking Act of 1978 (IBA).

DATES: These interim final rules are effective on August 29, 2018. Comments on the rules must be received by October 29, 2018.

ADDRESSES:

OCC: You may submit comments to the OCC by any of the methods set forth below. Commenters are encouraged to submit comments by the Federal eRulemaking Portal or email, if possible. Please use the title ''Expanded Examination Cycle for Certain Small Insured Depository Institutions and U.S. Branches and Agencies of Foreign Banks'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—''Regulations.gov'':* Go to *http://www.regulations.gov.* Enter ''Docket ID OCC–2018–0014'' in the Search Box and click ''Search.'' Click on ''Comment Now'' to submit public comments.
- Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov*, including instructions for submitting public comments.
- *Email: regs.comments@occ.treas.gov.*
- *Mail:* Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''Docket ID OCC–2018–0014'' in your comment. In general, the OCC will enter all comments received into the docket and publish the comments on the *Regulations.gov* website without change, including any business or personal information that you provide, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this rulemaking action by any of the following methods:

- *Viewing Comments Electronically:* Go to *http://www.regulations.gov.* Enter ''Docket ID OCC–2018–0014'' in the Search box and click ''Search.'' Click on ''Open Docket Folder'' on the right side of the screen. Comments and supporting materials can be viewed and filtered by clicking on ''View all documents and comments in this docket'' and then using the filtering tools on the left side of the screen.
- Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov.* The docket may be viewed after the close of the comment period in the same manner as during the comment period.
- *Viewing Comments Personally:* You may personally inspect comments at the OCC, 400 7th Street SW, Washington, DC. For security reasons, the OCC requires visitors to make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hearing impaired, TTY, (202) 649–5597. Upon arrival, visitors will be required to present a valid government-issued photo identification and to submit to security screening in order to inspect comments.

Board: You may submit comments, identified by Docket No. R–1615 and RIN 7100–AF09, by any of the following methods:

- *Agency Website: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include docket number and RIN in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal

Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available from the Board's website at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons or to remove sensitive personally identifiable information at the commenter's request. Public comments may also be viewed electronically or in paper form in Room 3515, 1801 K Street NW, Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays.

FDIC: You may submit comments, identified by RIN 3064–AE76, by any of the following methods:

- *Agency Website: http://www.FDIC.gov/regulations/laws/Federal/.* Follow the instructions for submitting comments on the Agency website.
- *Email: comments@fdic.gov.* Include the RIN 3064–AE76 in the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery/Courier:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street NW, Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.

Instructions: Comments submitted must include ''FDIC'' and ''RIN 3064–AE76.'' Comments received will be posted without change to *http://www.FDIC.gov/regulations/laws/Federal/,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT:

OCC: Enice Thomas, Senior Advisor to Senior Deputy Comptroller, Midsize and Community Bank Supervision, (202) 649–5420; and Deborah Katz, Assistant Director, Melissa J. Lisenbee, Senior Attorney, or Christopher Rafferty, Attorney, Legislative and Regulatory Activities Division, (202) 649–5490; for persons who are deaf or hearing impaired, TTY, (202) 649–5597.

Board: Division of Supervision and Regulation—Richard Naylor, Associate Director, (202) 728–5854; Jonathan Rono, Manager, (202) 721–4568; Assetou Traore, Supervisory Financial Analyst, (202) 974–7066; Virginia Gibbs, Manager, (202) 452–2521; or Alexander Kobulsky, Supervisory Financial Analyst, (202) 452–2031; and Legal Division—Laurie Schaffer, Associate General Counsel, (202) 452–2277; Mary Watkins, Attorney, (202) 452–3722; or Alyssa O'Connor, Attorney, (202) 452–3886.

FDIC: Policy Branch Division of Risk Management and Supervision—Thomas F. Lyons, Chief, Policy and Program Development, (202) 898–6850, *tlyons@FDIC.gov;* Karen J. Currie, Senior Examination Specialist, (202) 898–3981, Policy and Program Development, Division of Risk Management Supervision; Legal Division—Suzanne J. Dawley, Counsel, (202) 898–6509.

SUPPLEMENTARY INFORMATION:

I. Background

Enacted on May 24, 2018, section 210 of the Economic Growth Act [1] amended section 10(d) of the FDI Act [2] to permit the agencies to examine qualifying IDIs (generally those IDIs that are well capitalized and well managed) with under $3 billion in total assets not less than once during each 18-month period, rather than not less than once during each 12-month period. Prior to the enactment of the Economic Growth Act, qualifying IDIs with under $1 billion in total assets were eligible for an 18-month on-site examination cycle.[3]

More specifically, the agencies are issuing interim final rules to implement the Economic Growth Act's amendments to sections 10(d)(4) and 10(d)(10) of the FDI Act [4] that allow qualifying IDIs with under $3 billion in total assets to benefit from the extended 18-month examination schedule. In addition, the interim final rules make parallel changes to the agencies' regulations governing the on-site examination cycle for U.S. branches and agencies of foreign banks, consistent with the IBA.[5]

Section 10(d)(1) of the FDI Act [6] generally requires the appropriate Federal banking agency for an IDI [7] to conduct a full-scope, on-site examination of an IDI at least once during each 12-month period. With the enactment of section 210 of the Economic Growth Act, section 10(d)(4) of the FDI Act authorizes the appropriate Federal banking agency to extend the on-site examination cycle for an IDI to at least once during an 18-month period if the IDI (1) has total assets of less than $3 billion; (2) is well capitalized (as defined in 12 U.S.C.1831o (prompt corrective action)); (3) was found, at its most recent examination, to be well managed [8] and to have a composite condition of ''outstanding'' or, in the case of an IDI with total assets of not more than $200 million, ''outstanding'' or ''good;'' (4) is not subject to a formal enforcement proceeding or order by the FDIC or its appropriate Federal banking agency; and (5) has not undergone a change in control during the previous 12-month period in which a full-scope, on-site examination otherwise would have been required. Section 10(d)(10) of the FDI Act gives each appropriate Federal banking agency discretionary authority to extend eligibility for an 18-month examination cycle, by regulation, to qualifying IDIs with an ''outstanding'' or ''good'' composite condition and total assets not greater than $3 billion, if the agency determines that this amount would be consistent with the principles of safety and soundness for IDIs.[9]

In addition, section 7(c)(1)(C) of the IBA provides that a Federal or a State branch or agency of a foreign bank shall be subject to on-site examination by its appropriate Federal banking agency or State bank supervisor as frequently as a national or State bank would be subject to such an examination by the agency.

II. Description of the Interim Final Rules

The agencies are adopting interim final rules to implement the Economic Growth Act's amendments to sections 10(d)(4) and 10(d)(10) of the FDI Act. The rules implement section 10(d)(4) of the FDI Act to increase, from $1 billion to $3 billion, the total asset threshold under which an agency may apply an

[1] Public Law 115–174, 132 Stat. 1296 (2018).

[2] 12 U.S.C. 1820(d).

[3] *See* section 83001 of the Fixing America's Surface Transportation Act (the FAST) Act, enacted on December 4, 2015. Public Law 114–94, 129 Stat. 1312 (permitting the agencies to examine qualifying IDIs with under $1 billion in total assets not less than once during each 18-month period). The agencies published interim final rules implementing the FAST Act amendments in February 2016, and final rules in December 2016. *See* 81 FR 10069 (Feb. 29, 2016) and 81 FR 90949 (Dec. 16. 2016), respectively, codified at 12 CFR 4.6 and 4.7 (OCC), 12 CFR 208.64 and 211.26 (Board), 12 CFR 337.12 and 347.211 (FDIC).

[4] 12 U.S.C. 1820(d)(4) and 1820(d)(10).

[5] 12 U.S.C. 3105(c)(1)(C).

[6] 12 U.S.C. 1820(d)(1).

[7] The Board, FDIC, or OCC. *See* 12 U.S.C. 1813(q).

[8] IDIs are evaluated under the Uniform Financial Institutions Rating System (commonly referred to as ''CAMELS''). CAMELS is an acronym that is drawn from the first letters of the individual components of the rating system: *C*apital adequacy, *A*sset quality, *M*anagement, *E*arnings, *L*iquidity, and *S*ensitivity to market risk. CAMELS ratings of ''1'' and ''2'' correspond with ratings of ''outstanding'' and ''good.'' In addition to having a CAMELS composite rating of ''1'' or ''2,'' an IDI is considered to be ''well managed'' for the purposes of section 10(d) of the FDI Act *only* if the IDI also received a rating of ''1'' or ''2'' for the management component of the CAMELS rating at its most recent examination. *See* 72 FR 17798 (Apr. 10, 2007).

[9] The Board and the FDIC, as the appropriate Federal banking agencies for State-chartered insured banks and savings associations, are permitted to conduct on-site examinations of such IDIs on alternating 12-month or 18-month periods with an IDI's State supervisor, if the Board or FDIC, as appropriate, determines that the alternating examination conducted by the State carries out the purposes of section 10(d) of the FDI Act. 12 U.S.C. 1820(d)(3).

18-month on-site examination cycle for qualified IDIs that have an ''outstanding'' composite rating.

The agencies also are exercising their discretionary authority under section 10(d)(10) of the FDI Act to extend eligibility for an 18-month examination cycle, by regulation, to qualifying IDIs with an ''outstanding'' or ''good'' composite rating with total assets under $3 billion. The agencies have determined that increasing the maximum asset amount limitation for qualifying IDIs with less than $3 billion in total assets is consistent with the principles of safety and soundness.

In determining whether the reduction in examination frequency is consistent with the principles of safety and soundness for such IDIs, the agencies considered the following factors. The agencies agree that extending the examination cycle could make it more likely that there will be a delay in an agency's ability to detect deterioration in an IDI's performance. However, the agencies believe that extending the examination cycle from 12 months to 18 months for these small IDIs with relatively simple risk profiles should not appreciably increase their risk of financial deterioration or failure. In addition, the agencies will continue their off-site monitoring activities and have the ability to examine IDIs more frequently as necessary or appropriate. The agencies also note that, in order to qualify for an 18-month examination cycle, any IDI with total assets under $3 billion—including one with a composite rating of ''good''—must meet the other capital, managerial, and supervisory criteria set forth in section 10(d) of the FDI Act and the agencies' implementing regulations.

Considering the agencies' off-site monitoring activities; their discretion to examine IDIs more frequently as necessary; and the capital, managerial, and supervisory criteria in section 10(d) of the FDI Act, the agencies believe that increasing the maximum asset amount limitation for IDIs from less than $1 billion to less than $3 billion is consistent with the principles of safety and soundness. Additionally, the agencies believe this increase will allow the agencies to better focus their supervisory resources on the IDIs and U.S. branches and agencies of foreign banks (collectively, financial institutions) that may present capital, managerial, or other issues of supervisory concern, and therefore has the ability to enhance safety and soundness collectively for all financial institutions. The agencies will continue to monitor financial institutions in this asset range and the impact of the extended examination cycle.

In accordance with section 7(c)(1)(C) of the IBA, the agencies also are making conforming changes to their regulations governing the on-site examination cycle for the U.S. branches and agencies of foreign banks. For the same reasons as discussed above, the agencies believe that extending similar treatment to qualifying U.S. branches and agencies of foreign banks is consistent with the principles of safety and soundness.

The agencies estimate that the interim final rules will increase the number of banks and savings associations that may qualify for an extended 18-month examination cycle by approximately 420 (227 of which are supervised by the FDIC, 100 by the OCC, and 93 by the Board), bringing the total number to 4,798 banks and savings associations.[10] Approximately 33 U.S. branches and agencies of foreign banks would be eligible for the extended examination cycle based on the interim final rules (2 of which are supervised by the FDIC, 9 by the OCC, and 22 by the Board).[11]

Effective Date/Request for Comment

The agencies are issuing the interim final rules without prior notice and the opportunity for public comment and the 30-day delayed effective date ordinarily prescribed by the Administrative Procedure Act (APA).[12] Pursuant to section 553(b)(B) of the APA, general notice and the opportunity for public comment are not required with respect to a rulemaking when an ''agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' [13] The interim final rules implement the provisions in section 210 of the Economic Growth Act, which was enacted on May 24, 2018. In particular, the interim final rules adopt the statutory increase in the total asset threshold, from under $1 billion to under $3 billion, for qualifying IDIs with an ''outstanding'' composite rating, and also make available, pursuant to statutory authority, the 18-month examination cycle for qualifying IDIs with an ''outstanding'' or ''good'' composite rating and total assets under $3 billion. The interim final rules also make conforming amendments to the agencies' regulations governing the on-site examination cycle for U.S. branches and agencies of foreign banks, as required by statute.

The agencies believe that the public interest is best served by implementing the statutorily amended thresholds as soon as possible. Immediate implementation will reduce regulatory burden on small, well capitalized, and well managed financial institutions while also allowing the agencies to better focus their supervisory resources on those financial institutions that may present capital, managerial, or other issues of supervisory concern. Because the affected financial institutions and agencies must plan and prepare for examinations in advance, the agencies believe issuing interim final rules will provide the certainty necessary to allow the financial institutions and agencies to begin scheduling for examinations according to the new examination cycle period. In addition, the agencies believe that providing a notice and comment period prior to issuance of the interim final rules is unnecessary because the agencies do not expect public objection to the regulations being promulgated as they merely provide the relief that Congress intended. Moreover, because the interim final rules will permit an agency to conduct an on-site examination of financial institutions more frequently than once every 18 months, the agencies retain the ability to maintain the current—or a more frequent—on-site examination schedule for a financial institution if the relevant agency determines it would be necessary or appropriate. For these reasons, the agencies find there is good cause consistent with the public interest to issue the rules without advance notice and comment.[14]

The APA also requires a 30-day delayed effective date, except for (1) substantive rules which grant or recognize an exemption or relieve a restriction; (2) interpretative rules and statements of policy; or (3) as otherwise provided by the agency for good cause.[15] The agencies conclude that, because the rules recognize an exemption, the interim final rules are exempt from the APA's delayed effective date requirement.[16] Additionally, the agencies find good cause to publish the interim final rules with an immediate effective date for the same reasons set forth above under the discussion of section 553(b)(B) of the APA.

While the agencies believe there is good cause to issue the rules without advance notice and comment and with

[10] Call Report data, Mar. 31, 2018.

[11] *Id.*

[12] 5 U.S.C. 553.

[13] 5 U.S.C. 553(b)(B).

[14] 5 U.S.C. 553(b)(B); 553(d)(3).

[15] 5 U.S.C. 553(d).

[16] 5 U.S.C. 553(d)(1).

an immediate effective date, the agencies are interested in the views of the public and request comment on all aspects of the interim final rules.

III. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act [17] requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The agencies invite your comments on how to make these interim final rules easier to understand. For example:

- *Have the agencies presented the material in an organized manner that meets your needs? If not, how could this material be better organized?*
- *Are the requirements in the interim final rules clearly stated? If not, how could the interim final rules be more clearly stated?*
- *Do the interim final rules contain language or jargon that is not clear? If so, which language requires clarification?*
- *Would a different format (grouping and order of sections, use of headings, paragraphing) make the interim final rules easier to understand? If so, what changes to the format would make the interim final rules easier to understand?*
- *What else could the agencies do to make the regulation easier to understand?*

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) [18] requires an agency to consider whether the rules it proposes will have a significant economic impact on a substantial number of small entities.[19] The RFA applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b). As discussed previously, consistent with section 553(b)(B) of the APA, the agencies have determined for good cause that general notice and opportunity for public comment is unnecessary, and therefore the agencies are not issuing a notice of proposed rulemaking. Accordingly, the agencies have concluded that the RFA's requirements relating to initial and final regulatory flexibility analysis do not apply. Further, the agencies note that no small entities, as defined by the Small Business Administration's rules implementing the RFA, will be affected by the interim final rule's increased asset thresholds.

V. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 [20] states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. Because the interim final rules do not create a new, or revise an existing, collection of information, no information collection request submission needs to be made to the OMB.

VI. Riegle Community Development and Regulatory Improvement Act

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),[21] in determining the effective date and administrative compliance requirements for a new regulation that imposes additional reporting, disclosure, or other requirements on IDIs, each Federal banking agency must consider any administrative burdens that such regulation would place on IDIs and the benefits of such regulation. In addition, section 302(b) of the RCDRIA requires such new regulation to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form, with certain exceptions, including for good cause. Because the interim final rules expand eligibility for an 18-month, rather than 12-month, on-site examination schedule and are burden-reducing in nature, the interim final rules do not impose additional reporting, disclosure, or other requirements on IDIs, and section 302 of the RCDRIA therefore does not apply. Nevertheless, the agencies have considered the administrative burdens that such regulations would place on depository institutions and the benefits of such regulations in determining the effective date and compliance requirements. In addition, for the same reasons set forth previously under the discussion of section 553(b)(B) of the APA, the agencies find good cause would exist under section 302 of RCDRIA to publish these interim final rules with an immediate effective date.

VII. OCC Unfunded Mandates Reform Act of 1995 Determination

Consistent with section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), before promulgating any final rule for which a general notice of proposed rulemaking was published, the OCC prepares an economic analysis of the final rule. As discussed previously, the OCC has determined that the publication of a general notice of proposed rulemaking is unnecessary. Accordingly, the OCC has not prepared an economic analysis of the joint interim final rules under UMRA.

List of Subjects

12 CFR Part 4

Administrative practice and procedure, Freedom of information, Individuals with disabilities, Minority businesses, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Women.

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Currency, Federal Reserve System, Flood insurance, Mortgages, Reporting and recordkeeping requirements, Safety and soundness, Securities.

12 CFR Part 211

Exports, Federal Reserve System, Foreign banking, Holding companies, Investments, Reporting and recordkeeping requirements.

12 CFR Part 337

Banks, banking, Reporting and recordkeeping requirements, Savings Associations.

12 CFR Part 347

Authority delegations (Government agencies), Bank deposit insurance, Banks, banking, Credit, Foreign banking, Investments, Reporting and recordkeeping requirements, U.S. investments abroad.

Office of the Comptroller of the Currency

12 CFR Chapter I

For the reasons set forth in the joint preamble, the OCC amends part 4 of chapter I of title 12 of the Code of Federal Regulations as follows:

PART 4—ORGANIZATION AND FUNCTIONS, AVAILABILITY AND RELEASE OF INFORMATION, CONTRACTING OUTREACH PROGRAM, POST-EMPLOYMENT RESTRICTIONS FOR SENIOR EXAMINERS

■ 1. The authority citation for part 4 continues to read as follows:

Authority: 5 U.S.C. 301, 552; 12 U.S.C. 1, 93a, 161, 481, 482, 484(a), 1442, 1462a, 1463,

[17] Public Law 106–102, section 722, 113 Stat. 1338, 1471 (1999).

[18] 5 U.S.C. 601 *et seq.*

[19] Under regulations issued by the Small Business Administration, a small entity includes a depository institution, bank holding company, or savings and loan holding company with total assets of $550 million or less and trust companies with total assets of $38.5 million or less.

[20] 44 U.S.C. 3501–3521.

[21] 12 U.S.C. 4802(a).

1464 1817(a), 1818, 1820, 1821, 1831m, 1831p–1, 1831o, 1833e, 1867, 1951 *et seq.,* 2601 *et seq.,* 2801 *et seq.,* 2901 *et seq.,* 3101 *et seq.,* 3401 *et seq.,* 5321, 5412, 5414; 15 U.S.C. 77uu(b), 78q(c)(3); 18 U.S.C. 641, 1905, 1906; 29 U.S.C. 1204; 31 U.S.C. 5318(g)(2), 9701; 42 U.S.C. 3601; 44 U.S.C. 3506, 3510; E.O. 12600 (3 CFR, 1987 Comp., p. 235).

■ 2. Section 4.6 is amended by revising paragraph (b)(1) to read as follows:

§ 4.6 Frequency of examination of national banks and Federal savings associations.

* * * * *

(b) * * *

(1) The bank or Federal savings association has total assets of less than $3 billion;

* * * * *

■ 3. Section 4.7 is amended by revising paragraph (b)(1)(i) to read as follows:

§ 4.7 Frequency of examination of Federal agencies and branches.

* * * * *

(b) * * *

(1) * * *

(i) Has total assets of less than $3 billion;

* * * * *

Federal Reserve System

12 CFR Chapter II

For the reasons set forth in the joint preamble, the Board amends parts 208 and 211 of chapter II of title 12 of the Code of Federal Regulations as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

■ 4. The authority citation for part 208 continues to read as follows:

Authority: 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1818, 1820(d)(9), 1833(j), 1828(o), 1831, 1831o, 1831p–1, 1831r–1, 1831w, 1831x, 1835a, 1882, 2901–2907, 3105, 3310, 3331–3351, 3353, and 3906–3909; 15 U.S.C. 78b, 781(b), 78l(i), 780–4(c)(5), 78q, 78q–1, 78w, 1681s, 1681w, 6801 and 6805, 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104b, 4106, and 4128.

■ 5. Amend § 208.64 by revising paragraph (b)(1) to read as follows:

§ 208.64 Frequency of examination.

* * * * *

(b) * * *

(1) The bank has total assets of less than $3 billion;

* * * * *

PART 211—INTERNATIONAL BANKING OPERATIONS (REGULATION K)

■ 6. The authority citation for part 211 continues to read as follows:

Authority: 12 U.S.C. 221 *et seq.,* 1818, 1835a, 1841 *et seq.,* 3101 *et seq.,* 3901 *et seq.,* and 5101 *et seq.;* 15 U.S.C. 1681s, 1681w, 6801 and 6805.

■ 7. Amend § 211.26 by revising paragraph (c)(2)(i)(A) to read as follows:

§ 211.26 Examinations of offices and affiliates of foreign banks.

* * * * *

(c) * * *

(2) * * *

(i) * * *

(A) Has total assets of less than $3 billion;

* * * * *

Federal Deposit Insurance Corporation

12 CFR Chapter III

For the reasons set forth in the joint preamble, the Board of Directors of the FDIC amends parts 337 and 347 of chapter III of title 12 of the Code of Federal Regulations as follows:

PART 337—UNSAFE AND UNSOUND BANK PRACTICES

■ 8. The authority citation for part 337 continues to read as follows:

Authority: 12 U.S.C. 375a(4), 375b, 1463(a)(1), 1816, 1818(a), 1818(b), 1819, 1820(d), 1828(j)(2), 1831, 1831f, 5412.

■ 9. Amend § 337.12 by revising paragraph (b)(1) to read as follows:

§ 337.12 Frequency of examination.

* * * * *

(b) * * *

(1) The institution has total assets of less than $3 billion;

* * * * *

PART 347—INTERNATIONAL BANKING

■ 10. The authority citation for part 347 continues to read as follows:

Authority: 12 U.S.C. 1813, 1815, 1817, 1819, 1820, 1828, 3103, 3104, 3105, 3108, 3109; Pub. L. 111–203, section 939A, 124 Stat. 1376, 1887 (July 21, 2010) (codified 15 U.S.C. 78o–7 note).

■ 11. Amend § 347.211 by revising paragraph (b)(1)(i) to read as follows:

§ 347.211 Examination of branches of foreign banks.

* * * * *

(b) * * *

(1) * * *

(i) Has total assets of less than $3 billion;

* * * * *

Dated: August 20, 2018.

Joseph M. Otting,

Comptroller of the Currency.

Board of Governors of the Federal Reserve System, August 22, 2018.

Ann E. Misback,

Secretary to the Board.

Dated at Washington, DC, on August 22, 2018.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2018–18685 Filed 8–28–18; 8:45 am]

BILLING CODE 4810–33–P

FEDERAL HOUSING FINANCE AGENCY

12 CFR Parts 1209, 1217, and 1250

RIN 2590–AA93

Rules of Practice and Procedure; Civil Money Penalty Inflation Adjustment

AGENCY: Federal Housing Finance Agency.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Agency (FHFA) is issuing this final rule amending its Rules of Practice and Procedure and other agency regulations to adjust each civil money penalty within its jurisdiction to account for inflation, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

DATES: *Effective date:* September 28, 2018.

FOR FURTHER INFORMATION CONTACT: Stephen E. Hart, Deputy General Counsel, at (202) 649–3053, *Stephen.Hart@fhfa.gov,* or Frank R. Wright, Assistant General Counsel, at (202) 649–3087, *Frank.Wright@fhfa.gov* (not toll-free numbers); Federal Housing Finance Agency, 400 7th Street SW, Washington, DC 20219. The telephone number for the Telecommunications Device for the Hearing Impaired is: (800) 877–8339 (TDD only).

SUPPLEMENTARY INFORMATION:

I. Background

FHFA is an independent agency of the Federal government, and the financial safety and soundness regulator of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie

Mac) (collectively, the Enterprises), as well as the Federal Home Loan Banks (collectively, the Banks) and the Office of Finance under authority granted by the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act).[1] FHFA oversees the Enterprises and Banks (collectively, the regulated entities) and the Office of Finance to ensure that they operate in a safe and sound manner and maintain liquidity in the housing finance market in accordance with applicable laws, rules and regulations. To that end, FHFA is vested with broad supervisory discretion and specific civil administrative enforcement powers, similar to such authority granted by Congress to the Federal bank regulatory agencies.[2] Section 1376 of the Safety and Soundness Act (12 U.S.C. 4636) empowers FHFA to impose civil money penalties under specific conditions. FHFA's Rules of Practice and Procedure regulation (12 CFR part 1209) govern cease and desist proceedings, civil money penalty assessment proceedings, and other administrative adjudications.[3] FHFA's Flood Insurance regulation (12 CFR part 1250) governs flood insurance responsibilities as they pertain to the Enterprises.[4] FHFA's Implementation of the Program Fraud Civil Remedies Act of 1986 regulation (12 CFR part 1217) sets forth procedures for imposing civil penalties and assessments under the Program Fraud Civil Remedies Act (31 U.S.C. 3801 *et seq.*) on any person that makes a false claim for property, services or money from FHFA, or makes a false material statement to FHFA in connection with a claim, where the amount involved does not exceed $150,000.[5]

II. The Adjustment Improvements Act

The Federal Civil Penalties Inflation Adjustment Act of 1990 (''Inflation Adjustment Act''), as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (''Adjustment Improvements Act''), requires FHFA, as well as other Federal agencies with the authority to issue civil money penalties (CMPs), to adjust by regulation the maximum amount of each CMP authorized by law that the agency has jurisdiction to administer.[6] The Adjustment Improvements Act required agencies to make an initial ''catch-up'' adjustment of their CMPs upon the statute's enactment, and further requires agencies to make additional adjustments on an annual basis following the initial adjustment.[7]

Annual inflation adjustments under the Adjustment Improvements Act are based on the percent change between the October Consumer Price Index for All Urban Consumers (the CPI–U) preceding the date of the adjustment and the October CPI–U for the year before that.

III. Description of the Rule

This final rule adjusts the maximum penalty amount within each of the three tiers specified in 12 U.S.C. 4636 by amending the table contained in 12 CFR 1209.80 to reflect the new adjusted maximum penalty amount that FHFA may impose upon a regulated entity or any entity-affiliated party within each tier. The increases in maximum penalty amounts contained in this final rule may not necessarily affect the amount of any CMP that FHFA may seek for a particular violation, which may not be the maximum that the law allows; FHFA would calculate each CMP on a case-by-case basis in light of a variety of factors.[8] This rule also adjusts the maximum penalty amounts for violations under the FHFA Flood Insurance regulation by amending the text of 12 CFR 1250.3 to reflect the new adjusted maximum penalty amount that FHFA may impose for violations under that regulation. This rule also adjusts the maximum amounts for civil money penalties under the Program Fraud Civil Remedies Act by amending the text of 12 CFR 1217.3 to reflect the new adjusted maximum penalty amount that FHFA may impose for violations under that regulation.

The Adjustment Improvements Act directs federal agencies to calculate each annual CMP adjustment as the percent change between the CPI–U for the previous October and the CPI–U for October of the calendar year before.[9] The maximum CMP amounts for FHFA penalties under 12 U.S.C. 4636 were last adjusted in 2016.[10] Since FHFA is making this round of adjustments in calendar year 2018, and the maximum CMP amounts were last set in calendar year 2016, the inflation adjustment amount for each maximum CMP amount was calculated by comparing the CPI–U for October 2015 with the CPI–U for October 2016, resulting in an inflation factor of 1.01636, and then comparing the CPI–U for October 2016 with the CPI–U for October 2017, resulting in an inflation factor of 1.02041. For each maximum CMP calculation, the product of this inflation adjustment and the previous maximum penalty amount was then rounded to the nearest whole dollar as required by the Adjustment Improvements Act, to determine the new adjusted maximum penalty amount.[11] The table below sets out these items accordingly.

U.S. Code citation	Description	Previous maximum penalty amount	Rounded inflation increase	New adjusted maximum penalty amount
12 U.S.C. 4636(b)(1)	First Tier	$10,982	$408	$11,390
12 U.S.C. 4636(b)(2)	Second Tier	54,910	2,037	56,947
12 U.S.C. 4636(b)(4)	Third Tier (Entity-affiliated party and Regulated entity).	2,196,380	81,495	2,277,875

Similarly, the CMP for FHFA penalties under the Program Fraud Civil Remedies Act were last adjusted in 2016.[12] Since FHFA is making this round of adjustments in calendar year 2018, and the maximum CMP amounts were last set in calendar year 2016, the inflation adjustment amount for each maximum CMP amount was calculated as above by comparing the CPI–U for October 2015 with the CPI–U for October 2016, resulting in an inflation

[1] *See* Safety and Soundness Act, 12 U.S.C. 4513 and 4631–4641.

[2] *Id.*

[3] *See* 12 CFR part 1209.

[4] *See* 12 CFR part 1250.

[5] *See generally,* 31 U.S.C. 3801 *et seq.*

[6] *See* 28 U.S.C. 2461 note.

[7] FHFA promulgated its catch-up adjustment of its CMPs with an interim final rule published July 1, 2016. 81 FR 43028.

[8] *See, e.g.,* 12 CFR 1209.7(c); FHFA Enforcement Policy, AB 2013–03 (May 31, 2013).

[9] This final rule will incorporate the annual inflation adjustments for 2017 and 2018 by performing the calculation for 2017, and applying the 2018 adjustment to that amount.

[10] *See* 81 FR 43028, 43030 (July 1, 2016).

[11] 28 U.S.C. 2461 note.

[12] *See* 81 FR 43031, 43035 (July 1, 2016).

factor of 1.01636, and then comparing the CPI–U for October 2016 with the CPI–U for October 2017, resulting in an inflation factor of 1.02041. The table below sets out these items accordingly.

U.S. Code citation	Description	Previous maximum penalty amount	Rounded inflation increase	New adjusted maximum penalty amount
31 U.S.C. 3802(a)(1)	Maximum penalty per false claim	$10,781	$400	$11,181
31 U.S.C 3802(a)(2)	Maximum penalty per false statement	10,781	400	11,181

Similarly, the CMP for FHFA penalties under the Flood Insurance regulation were last adjusted in 2016.[13] Since FHFA is making this round of adjustments in calendar year 2018, and the maximum CMP amounts were last set in calendar year 2016, the inflation adjustment amount for each maximum CMP amount was calculated as above by comparing the CPI–U for October 2015 with the CPI–U for October 2016, resulting in an inflation factor of 1.01636, and then comparing the CPI–U for October 2016 with the CPI–U for October 2017, resulting in an inflation factor of 1.02041. The table below sets out these items accordingly.

U.S. Code citation	Description	Previous maximum penalty amount	Rounded inflation increase	New adjusted maximum penalty amount
42 U.S.C. 4012a(f)(5)	Maximum penalty per violation	$534	$20	$554
42 U.S.C. 4012a(f)(5)	Maximum total penalties assessed against an Enterprise in a calendar year.	154,028	5,715	159,743

IV. Differences Between the Federal Home Loan Banks and the Enterprises

When promulgating any regulation that may have future effect relating to the Banks, the Director is required by section 1313(f) of the Safety and Soundness Act to consider the differences between the Banks and the Enterprises with respect to the Banks' cooperative ownership structure; mission of providing liquidity to members; affordable housing and community development mission; capital structure; and joint and several liability (12 U.S.C. 4513(f)).[14] The Director considered the differences between the Banks and the Enterprises, as they relate to the above factors, and determined that this final rule is appropriate, as the maximum civil money penalty amounts are set by statute, as is the manner in which FHFA is required to adjust those amounts, so there is no possibility to vary those provisions in this rule based on consideration of the factors recited in section 1313(f). The inflation adjustments effected by the final rule are mandated by law, Any imposition of civil money penalties would only take place after an enforcement action in which FHFA would have an opportunity to consider all relevant factors. The special features of the Banks identified in section 1313(f) of the Safety and Soundness Act can be accommodated, if appropriate, along with any other relevant factors, when determining any actual penalties.

V. Regulatory Impact

Administrative Procedure Act

FHFA finds good cause that notice and an opportunity to comment on this final rule are unnecessary under section 553(b)(B) of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B). The Adjustment Improvements Act states that the annual civil money penalty adjustments shall be made notwithstanding the rulemaking provisions of 5 U.S.C. 553. Furthermore, this rulemaking conforms with and is consistent with the statutory directive set forth in the Adjustment Improvements Act. As a result, there are no issues of policy discretion about which to seek public comment. Accordingly, FHFA is issuing these amendments as a final rule.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (RFA),[15] an agency must prepare a regulatory flexibility analysis for all proposed and final rules that describes the impact of the rule on small entities, unless the head of an agency certifies that the rule will not have ''a significant economic impact on a substantial number of small entities.'' However, the RFA applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to the APA.[16] As discussed above, FHFA has determined for good cause that the APA does not require a general notice of proposed rulemaking for this rule. Thus, the RFA does not apply to this final rule.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) requires that regulations involving the collection of information receive clearance from the Office of Management and Budget (OMB). This rule contains no such collection of information requiring OMB approval under the Paperwork Reduction Act. Consequently, no information has been submitted to OMB for review.

Congressional Review Act

FHFA has determined that this regulatory action does not qualify as either a ''rule'' or a ''major rule'' under the Congressional Review Act. *See* 5 U.S.C. 804(2), (3).

List of Subjects

12 CFR Part 1209

Administrative practice and procedure, Penalties.

12 CFR Part 1217

Civil remedies, Program fraud.

[13] *See* 81 FR 43028, 43031 (July 1, 2016).

[14] So in original; no paragraphs (d) and (e) were enacted. *See* 12 U.S.C.A. 4513 n 1.

[15] 5 U.S.C. 603.

[16] 5 U.S.C. 603(a), 604(a).

12 CFR Part 1250

Flood insurance, Government-sponsored enterprises, Penalties, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the **SUPPLEMENTARY INFORMATION** and under the authority of 12 U.S.C. 4513b and 12 U.S.C. 4526, the Federal Housing Finance Agency hereby amends subchapters A and C of chapter XII of Title 12 of the Code of Federal Regulations as follows:

SUBCHAPTER A—ORGANIZATION AND OPERATIONS

PART 1209—RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 1209 continues to read as follows:

Authority: 5 U.S.C. 554, 556, 557, and 701 *et seq.;* 12 U.S.C. 1430c(d); 12 U.S.C. 4501, 4502, 4503, 4511, 4513, 4513b, 4517, 4526, 4566(c)(1) and (c)(7), 4581–4588, 4631–4641; and 28 U.S.C. 2461 note.

■ 2. Revise § 1209.80 to read as follows:

§ 1209.80 Inflation adjustments.

The maximum amount of each civil money penalty within FHFA's jurisdiction, as set by the Safety and Soundness Act and thereafter adjusted in accordance with the Inflation Adjustment Act, is as follows:

U.S. Code citation	Description	New adjusted maximum penalty amount
12 U.S.C. 4636(b)(1)	First Tier	$11,390
12 U.S.C. 4636(b)(2)	Second Tier	56,947
12 U.S.C. 4636(b)(4)	Third Tier (Regulated Entity or Entity-Affiliated party)	2,277,875

■ 3. Revise § 1209.81 to read as follows:

§ 1209.81 Applicability.

The inflation adjustments set out in § 1209.80 shall apply to civil money penalties assessed in accordance with the provisions of the Safety and Soundness Act, 12 U.S.C. 4636, and subparts B and C of this part, for violations occurring after September 28, 2018.

PART 1217—PROGRAM FRAUD CIVIL REMEDIES ACT

■ 4. The authority citation for part 1217 continues to read as follows:

Authority: 12 U.S.C. 4501; 12 U.S.C. 4526; 28 U.S.C. 2461 note; 31 U.S.C. 3801–3812.

■ 5. Amend § 1217.3 by revising paragraphs (a)(1) introductory text and (b)(1) introductory text to read as follows:

§ 1217.3 Basis for civil penalties and assessments.

(a) * * * (1) A civil penalty of not more than $11,181 may be imposed upon a person who makes a claim to FHFA for property, services, or money where the person knows or has reason to know that the claim:

* * * * *

(b) * * * (1) A civil penalty of up to $11,181 may be imposed upon a person who makes a written statement to FHFA with respect to a claim, contract, bid or proposal for a contract, or benefit from FHFA that:

* * * * *

SUBCHAPTER C—ENTERPRISES

PART 1250—FLOOD INSURANCE

■ 6. The authority citation for part 1250 continues to read as follows:

Authority: 12 U.S.C. 4521(a)(4) and 4526; 28 U.S.C. 2461 note; 42 U.S.C. 4001 note; 42 U.S.C. 4012a(f)(3), (4), (5), (8), (9), and (10).

■ 7. Amend § 1250.3 by revising paragraph (c) to read as follows:

§ 1250.3 Civil money penalties.

* * * * *

(c) *Amount.* The maximum civil money penalty amount is $534 for each violation that occurs before September 28, 2018, with total penalties not to exceed $154,028. For violations that occur on or after September 28, 2018, the civil money penalty under this section may not exceed $554 for each violation, with total penalties assessed under this section against an Enterprise during any calendar year not to exceed $159,743.

* * * * *

Dated: August 15, 2018.

Melvin L. Watt,

Director, Federal Housing Finance Agency.

[FR Doc. 2018–18517 Filed 8–28–18; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2018–0062; Airspace Docket No. 18–ASO–3]

RIN 2120–AA66

Amendment of Class D and Class E Airspace; Pensacola, FL, and Establishment of Class E Airspace; Milton, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class D airspace and Class E airspace extending upward from 700 feet above the surface at Choctaw Naval Outlying Field (NOLF), Milton, FL, by changing the city associated with the airport name in the above airspace classes and adjusting the geographic coordinates of the airport and the Santa Rosa TACAN navigation aid to match the FAA's aeronautical database. Additionally, Class E surface airspace is established at Choctaw NOLF for the safety of aircraft landing and departing the airport when the air traffic control tower is closed. Also, an editorial change is made to the Class D airspace legal description replacing ''Airport/Facility Directory'' with the term ''Chart Supplement''. This action enhances the safety and management of instrument flight rules (IFR) operations at this airport.

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: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the 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, and amends Class D and Class E airspace at Choctaw NOLF, Milton, FL, to support IFR operations at the airport.

History

The FAA published a notice of proposed rulemaking (NPRM in the **Federal Register** (83 FR 9242, March 5, 2018) for Docket No. FAA–2018–0062 to amend Class D airspace and Class E airspace extending upward from 700 feet above the surface at Choctaw NOLF, Milton, FL, and establish Class E surface area airspace at Choctaw NOLF, Milton, FL.

Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. One comment was received supporting the proposal.

Class D and E airspace designations are published in paragraph 5000, 6002, and 6005, respectively, of FAA Order 7400.11B dated August 3, 2017, and effective September 15, 2017, which is incorporated by reference in 14 CFR part 71.1. The Class D and 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 proposes to amend FAA Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, and effective September 15, 2017. FAA Order 7400.11B is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11B lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by:

Amending Class D airspace at Choctaw NOLF, Milton, FL, by adjusting the geographic coordinates of the airport and the Santa Rosa TACAN navigation aid to be in concert with the FAA's aeronautical database. Also, this action makes an editorial change in the airspace designation replacing the city associated with the airport name from Pensacola, to Milton, to comply with a change to FAA Order 7400.2L, Procedures for Handling Airspace Matters. Additionally, this action replaces the outdated term ''Airport/Facility Directory'' with the term ''Chart Supplement'' in the airspace legal description;

Establishing Class E surface area airspace at Choctaw NOLF, Milton, FL, within a 2.5-mile radius of Choctaw NOLF, with an extension from the 2.5-mile radius to 10.5 miles south of the Santa Rosa TACAN, for the safety of aircraft landing and departing the airport after the air traffic control tower closes; and Amending Class E airspace extending upward from 700 feet above the surface at Choctaw NOLF, Milton, FL, by adjusting the geographic coordinates of the airport to be in concert with the FAA's aeronautical database. This action also makes an editorial change by removing the airport name, Choctaw Outlying Field, from the airspace designation, which now becomes Milton, FL.

This action amends the geographic coordinates of these airports and the Keesler TACAN navigation aid to be in concert with the FAA's aeronautical database.

Class D and Class E airspace designations are published in Paragraph 5000, 6002, and 6005, respectively, of FAA Order 7400.11B, dated August 3, 2017, and effective September 15, 2017, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5a. 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 Federal Aviation Administration Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, effective September 15, 2017, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASO FL D Milton, FL [Amended]

Choctaw NOLF, FL
(Lat. 30°30′25″ N, long. 86°57′35″ W)
Santa Rosa TACAN
(Lat. 30°36′55″ N, long. 86°56′15″ W)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 2.5-mile radius of Choctaw NOLF and within 1.5 miles each side of the Santa Rosa TACAN 188° radial, extending from the 2.5-mile radius to 10.5 miles south of the TACAN; excluding that airspace within Restricted Area R–2915A. This Class D airspace area is effective during the specific dates and times established by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6002 Class E Surface Area Airspace.

* * * * *

ASO FL E2 Milton, FL [New]

Choctaw NOLF, FL
(Lat. 30°30′25″ N, long. 86°57′35″ W)
Santa Rosa TACAN
(Lat. 30°36′55″ N, long. 86°56′15″ W)

That airspace extending upward from the surface within a 2.5-mile radius of Choctaw NOLF and within 1.5 miles each side of the Santa Rosa TACAN 188° radial, extending from the 2.5-mile radius to 10.5 miles south of the TACAN; excluding that airspace within Restricted Area R–2915A. This Class E airspace area is effective during the specific dates and times established by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

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

* * * * *

ASO FL E5 Milton, FL [Amended]

Choctaw NOLF, FL
(Lat. 30°30′25″ N, long. 86°57′35″ W)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Choctaw NOLF.

Issued in College Park, Georgia, on August 20, 2018.

Ryan W. Almasy,

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

[FR Doc. 2018–18644 Filed 8–28–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2018–0138; Airspace Docket No. 18–ASW–5]

RIN 2120–AA66

Amendment of Class D and E Airspace; Austin, TX; and Establishment of Class E Airspace; Georgetown, TX, and Austin, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class D airspace at San Marcos Regional Airport, Austin, TX; establishes Class E airspace designated as a surface area at Georgetown Municipal Airport, Georgetown, TX, and San Marcos Regional Airport; and amends Class E airspace extending upward from 700 feet above the surface at San Marco Regional Airport and Lockhart Municipal Airport, Lockhart, TX. This action is at the request of Austin Air Traffic Control Tower (ATCT)/Terminal Radar Approach Control (TRACON) to establish part-time Class E airspace designated as a surface area at Georgetown Municipal Airport and San Marcos Regional Airport and to review the associated airspace for the safety and management of instrument flight rule (IFR) operations at these airports. The name of San Marcos Regional Airport is updated to coincide with the FAA's aeronautical database, and the outdated term ''Airport/Facility Directory'' is replaced with the term ''Chart Supplement''.

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 D airspace at San Marcos Regional Airport, Austin, TX; establishes Class E airspace designated as a surface area at Georgetown Municipal Airport, Georgetown, TX, and San Marcos Regional Airport; and amends Class E airspace extending upward from 700 feet above the surface at San Marco Regional Airport and Lockhart Municipal Airport, Lockhart, TX, to support IFR operations at these airports.

History

The FAA published a notice of proposed rulemaking (NPRM) in the **Federal Register** (83 FR 25971; June 5, 2018) for Docket No. FAA–2018–0138 to amend Class D airspace at San Marcos Regional Airport, Austin, TX; establish Class E airspace designated as a surface area at Georgetown Municipal Airport, Georgetown, TX, and San Marcos Regional Airport; and amend Class E airspace extending upward from 700 feet above the surface at San Marco Regional Airport and Lockhart Municipal Airport, Lockhart, TX. 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 D and E airspace designations are published in paragraphs 5000, 6002, and 6005, respectively, of FAA Order 7400.11B, dated August 3, 2017, and effective September 15, 2017, which is incorporated by reference in 14 CFR 71.1. The Class D and 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:

Amends the location in the header of the airspace legal description of the Class D airspace from San Marcos, TX, to Austin, TX, to coincide with the FAA's aeronautical database; amends the radius to within a 4.3-mile radius (increased from a 4.2-mile radius) of San Marcos Regional Airport (formerly San Marcos Municipal Airport), Austin, TX; adds an extension 1.0 mile each side of the 306° bearing from the San Marcos Regional: RWY 13–LOC extending from the 4.3-mile radius to 4.6 miles northwest of the airport; updates the name of the airport to coincide with the FAA's aeronautical database; and makes an editorial change to the airspace legal description replacing ''Airport/Facility Directory'' with ''Chart Supplement'';

Establishes Class E airspace designated as a surface area within a 4.3-mile radius of San Marcos Regional Airport, Austin, TX, with an extension 1.0 mile each side of the 306° bearing from the San Marcos Regional: RWY 13–LOC extending from the 4.3-mile radius to 4.6 miles northwest of the airport; and with an extension 1.0 mile each side of the 313° bearing from the airport from the 4.3-mile radius to 5.0 miles northwest of the airport; and with an extension 1.0 mile each side of the 268° bearing from the airport from the 4.3-mile radius to 4.4 miles west of the airport; and with an extension 1.0 mile each side of the 358° bearing from the airport from the 4.3-mile radius to 4.4 miles north of the airport;

Establishes Class E airspace designated as a surface area within a 4.1-mile radius of Georgetown Municipal Airport, Georgetown, TX; and

Amends the location in the header of the airspace legal description of the Class E airspace extending upward from 700 feet above the surface from San Marcos, TX, to Austin, TX, to coincide with the FAA's aeronautical database; amends the radius to within a 6.8-mile radius (increased from a 6.7-mile radius) of San Marcos Regional Airport (formerly San Marcos Municipal Airport), Austin, TX; amends the extension to the northwest of the airport to 12.0 miles (increased from 11.1 miles); amends the extension to the east of the airport to 10.5 miles (increased from 10.4 miles); amends the extension to the southeast of the airport to 9.7 miles (increased from 9.6 miles); amends the extension to the south of the airport to 10.5 miles (increased from 10.4 miles); and amends the radius to within 6.4-miles (increased from a 6.3-mile radius) of Lockhart Municipal Airport, Lockhart, TX, included in the Austin, TX, airspace legal description.

This action is at the request of Austin ATCT/TRACON to establish part-time Class E airspace designated as a surface areas at Georgetown Municipal Airport and San Marcos Regional Airport and to review the associated airspace for the safety and management of IFR operations at these airports.

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 5000 Class D Airspace.

* * * * *

ASW TX D Austin, TX [Amended]

San Marcos Regional Airport, TX
(Lat. 29°53′34″ N, long. 97°51′47″ W)
San Marcos Regional: RWY 13–LOC
(Lat. 29°53′03″ N, long. 97°51′15″ W)

That airspace extending upward from the surface to and including 3,100 feet MSL within a 4.3-mile radius of San Marcos Regional Airport, and within 1.0 mile each side of the San Marcos Regional: RWY13–LOC extending from the 4.3-mile radius to 4.6 miles northwest of the airport, and within 1.0 mile each side of the 313° bearing from the airport extending from the 4.3-mile radius to 5.0 miles northwest of the airport, and within 1.0 mile each side of the 268° bearing from the airport extending from the 4.3-mile radius to 4.4 miles west of the airport, and within 1.0 mile each side of the 358° bearing from the airport extending from the 4.3-mile radius to 4.4 miles north of the airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continually published in the Chart Supplement.

Paragraph 6002 Class E Airspace Areas Designated as Surface Areas.

* * * * *

ASW TX E2 Austin, TX [New]

San Marcos Regional Airport, TX
(Lat. 29°53′34″ N, long. 97°51′47″ W)
San Marcos Regional: RWY 13–LOC
(Lat. 29°53′03″ N, long. 97°51′15″ W)

That airspace extending upward from the surface to and including 3,100 feet MSL within a 4.3-mile radius of San Marcos Regional Airport, and within 1.0 mile each side of the San Marcos Regional: RWY13–LOC extending from the 4.3-mile radius to 4.6 miles northwest of the airport, and within 1.0 mile each side of the 313° bearing from the airport extending from the 4.3-mile radius to 5 miles northwest of the airport, and within 1.0 mile each side of the 268° bearing from the airport extending from the 4.3-mile radius to 4.4 miles west of the airport, and within 1.0 mile each side of the 358° bearing from the airport extending from the 4.3-mile radius to 4.4 miles north of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continually published in the Chart Supplement.

* * * * *

ASW TX E2 Georgetown, TX [New]

Georgetown Municipal Airport, TX
(Lat. 30°40′44″ N, long. 97°40′46″ W)

That airspace extending upward from the surface to and including 3,300 feet MSL within a 4.1-mile radius of Georgetown Municipal Airport. This Class E airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Chart Supplement.

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

* * * * *

ASW TX E5 Austin, TX [Amended]

San Marcos Regional Airport, TX
(Lat. 29°53′34″ N, long. 97°51′47″ W)
Lockhart Municipal Airport, TX
(Lat. 29°51′01″ N, long. 97°40′21″ W)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of San Marcos Regional Airport, and within 2 miles each side of the 268° bearing from the airport extending from the 6.8-mile radius to 13.1 miles west of the airport, and within 2 miles each side of the 313° bearing from the airport extending from the 6.8-mile radius to 12.0 miles northwest of the airport, and within 2 miles each side of the 088° bearing from the airport extending from the 6.8-mile radius to 10.5 miles east of the airport, and within 2 miles each side of the 133° bearing from the airport extending from the 6.8-mile radius to 9.7 miles southeast of the airport, and within 2 miles each side of the 178° bearing from the airport extending from the 6.8-mile radius to 10.5 miles south of the airport, and within a 6.4-mile radius of Lockhart Municipal Airport.

Issued in Fort Worth, Texas, on August 22, 2018.

Walter Tweedy,

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

[FR Doc. 2018–18645 Filed 8–28–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

[SATS No. AL–082–FOR; Docket ID: OSM–2017–0011; S1D1S SS08011000 SX064A000 189S180110; S2D2S SS08011000 SX064A000 18XS501520]

Alabama Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are approving an amendment to the Alabama regulatory program (Alabama program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Alabama proposed revisions to its program regarding permit fees. Alabama revised its program at its own initiative to raise revenues sufficient to fund the Alabama Surface Mining Commission's (ASMC) share of costs to administer the Alabama coal regulatory program, including the reviewing, administering, inspecting, and enforcing of surface coal mining permits in Alabama.

DATES: The effective date is September 28, 2018.

FOR FURTHER INFORMATION CONTACT: William Joseph, Acting Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 135 Gemini Circle, Suite 215, Homewood, Alabama 35209. Telephone: (205) 290–7282. Email: *bjoseph@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Alabama Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the requirements of the Act and consistent with the Federal regulations. *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Alabama program effective May 20, 1982. You can find background information on the Alabama program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Alabama program in the May 20, 1982, **Federal Register** (47 FR 22030). You can also find later actions concerning the Alabama program and program amendments at 30 CFR 901.10, 901.15, and 901.16.

II. Submission of the Amendment

By email dated August 14, 2017 (Administrative Record No. AL–0672), Alabama sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*) at its own initiative.

We announced the receipt of the proposed amendment in the January 22, 2018, **Federal Register** (83 FR 2953). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on February 21, 2018. We received four public comments (Administrative Record No. AL–0672–03) that are addressed in the Public Comments section of IV, Summary and Disposition of Comments, below.

III. OSMRE's Findings

We are approving the amendment as described below. The following are findings we made concerning Alabama's amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. Any revisions that we do not specifically discuss below concerning non-substantive wording or editorial changes can be found in the full text of the program amendment available at *www.regulations.gov.*

Alabama Administrative Code 880–X–8B–.07

Alabama proposed to revise its regulations at Alabama Administrative Code 880–X–8B–.07, increasing coal mining permit fees to adequately fund the ASMC for the purposes of reviewing, administering, inspecting, and enforcing surface coal mining permits in Alabama.

By this amendment, Alabama is:

(1) Increasing the initial acreage fee from $35.00 per acre to $75.00, to be paid on each acre in a permit covered by a performance bond prior to the initiation of operations on the permit (or on an increment if increments are used), and to be paid on all bonded acreage covered by a permit renewal;

(2) Increasing the basic fee for a coal exploration permit application from $2,000.00 to $2,500.00;

(3) Increasing the basic fee for a permit renewal application from $1,000.00 to $2,500.00;

(4) Increasing the basic fee for a permit transfer application from $200.00 to $500.00;

(5) Adding an annual acreage fee for expired permits of $15.00, per acre, to be paid by December 31st of each year on each acre covered by a performance bond as of October 1st of the year; and

(6) Adding the inspection of permits to the ASMC's uses for the deposited permit fees.

Alabama fully funds its share of costs to regulate the coal mining industry with fees paid by the coal industry. The proposed fee revisions are intended to provide adequate funding to pay the

State's cost of operating its regulatory program. The ASMC does not expect the increase in permit fees to exceed the actual or anticipated cost of reviewing, administering, inspecting, and enforcing surface coal mining permits in Alabama.

We find that Alabama's fee changes are consistent with the discretionary authority provided by the Federal regulation at 30 CFR 777.17. Therefore, we are approving Alabama's revision.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment. As noted in section II, we received four comments (Administrative Record No. AL–0672–03). The four commenters provided comments that were outside the scope of the proposed amendment and not germane to the topic of surface coal mining in general. We are not addressing these comments in this final rule for these reasons. The full texts of these comments are available at *www.regulations.gov.*

Federal Agency Comments

On August 21, 2017, pursuant to 30 CFR 732.17(h)(11)(i) and Section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Alabama program (Administrative Record No. AL–0672–02). We did not receive any comments.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Alabama proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment. However, on August 21, 2017, under 30 CFR 732.17(h)(11)(i), we requested comments from the EPA on the amendment (Administrative Record No. AL–0672–02). The EPA did not respond to our request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On August 21, 2017, we requested comments on the amendment (Administrative Record No. AL–0672–02). We did not receive any comments.

V. OSMRE's Decision

Based on the above findings, we are approving the Alabama amendment that was submitted on August 14, 2017 (Administrative Record No. AL–0672).

To implement this decision, we are amending the Federal regulations at 30 CFR part 901 that codify decisions concerning the Alabama program. In accordance with the Administrative Procedure Act, this rule will take effect 30 days after the date of publication. Section 503(a) of SMCRA requires that the State's program demonstrate the State has the capability of carrying out the provisions of the Act and meeting its purposes. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

This rulemaking does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

Pursuant to Office of Management and Budget (OMB) Guidance dated October 12, 1993, the approval of state program amendments is exempted from OMB review under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has reviewed this rule as required by Section 3(a) of Executive Order 12988. The Department has determined that this **Federal Register** document meets the criteria of Section 3 of Executive Order 12988, which is intended to ensure that the agency review its legislation and regulations to minimize litigation; and that the agency's legislation and regulations provide a clear legal standard for affected conduct rather than a general standard, and promote simplification and burden reduction. Because Section 3 focuses on the quality of Federal legislation and regulations, the Department limited its review under this Executive Order to the quality of this **Federal Register** document and to changes to the Federal regulations. The review under this Executive Order did not extend to the language of the State regulatory program or to the program amendment that the State of Alabama drafted.

Executive Order 13132—Federalism

This rule is not a ''[p]olicy that [has] Federalism implications'' as defined by Section 1(a) of Executive Order 13132 because it does not have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Instead, this rule approves an amendment to the Alabama program submitted and drafted by that State. OSMRE reviewed the submission with fundamental federalism principles in mind as set forth in Section 2 and 3 of the Executive Order and with the principles of cooperative federalism as set forth in SMCRA. *See, e.g.,* 30 U.S.C. 1201(f). As such, pursuant to Section 503(a)(1) and (7)(30 U.S.C. 1253(a)(1) and (7)), OSMRE reviewed the program amendment to ensure that it is ''in accordance with'' the requirements of SMCRA and ''consistent with'' the regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rulemaking on Federally-recognized Tribes and have determined that the rulemaking does not have substantial direct effects on one or more Tribes, on the relationship between the Federal government and Tribes, or on the distribution of power and responsibilities between the Federal Government and Tribes. The basis for this determination is that our decision is on a State regulatory program and does not involve Federal regulations involving Indian lands.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

Executive Order 13211 of May 18, 2001, requires agencies to prepare a Statement of Energy Effects for a rulemaking that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rulemaking is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rulemaking does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute

major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rulemaking does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rulemaking, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rulemaking would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rulemaking is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rulemaking: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rulemaking, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rulemaking will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rulemaking, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 901

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 16, 2018.

Alfred L. Clayborne,

Regional Director, Mid-Continent Region.

For the reasons set out in the preamble, 30 CFR part 901 is amended as set forth below:

PART 901—ALABAMA

■ 1. The authority citation for part 901 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 901.15 is amended in the table by adding an entry for ''Alabama Administrative Code 880–X–8B–.07'' in chronological order by ''Date of final publication'' to read as follows:

§ 901.15 Approval of Alabama regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	*
August 14, 2017	August 29, 2018	Alabama Administrative Code 880–X–8B–.07.

[FR Doc. 2018–18716 Filed 8–28–18; 8:45 am]
BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

[SATS No. AL–081–FOR; Docket ID: OSM–2017–0006; S1D1S SS08011000 SX064A000 189S180110; S2D2S SS08011000 SX064A000 18XS501520]

Alabama Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are approving an amendment to the Alabama regulatory program (Alabama program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Alabama proposed revisions to its program to allow the Alabama Surface Mining Commission (ASMC) to revise its current permit fee collection procedures from the term of the mine permit to enable the collection of permit fees over the entire life of the mine. The revision also defines the life of the mine to be from the issuance of the permit through the full release of the performance bond.

DATES: The effective date is September 28, 2018.

FOR FURTHER INFORMATION CONTACT: William Joseph, Acting Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 135 Gemini Circle, Suite 215, Homewood, Alabama 35209. Telephone: (205) 290–7282. Email: *bjoseph@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Alabama Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the requirements of the Act and consistent with the Federal regulations. See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Alabama program effective May 20, 1982. You can find background information on the Alabama program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Alabama program in the May 20, 1982, **Federal Register** (47 FR 22030). You can also find later actions concerning the Alabama program and program amendments at 30 CFR 901.10, 901.15, and 901.16.

II. Submission of the Amendment

By email dated June 21, 2017 (Administrative Record No. AL–0671), Alabama sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*) at its own initiative.

We announced the receipt of the proposed amendment in the January 29, 2018, **Federal Register** (83 FR 4011). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on February 28, 2018. We received 13 public comments (Administrative Record No. AL–0671–03) that are addressed in the Public Comments section of IV, Summary and Disposition of Comments, below.

III. OSMRE's Findings

We are approving the amendment as described below. The following are findings we made concerning Alabama's amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. Any revisions that we do not specifically discuss below concerning non-substantive wording or editorial changes can be found in the full text of the program amendment available at *www.regulations.gov.*

Code of Alabama Section 9–16–83 Permits—Contents of application; reclamation plan; copy of application filed for public inspections; insurance; blasting plan.

Alabama proposed revisions to its regulations at Code of Alabama section 9–16–83, allowing the ASMC to revise its current permit fee collection procedures from the term of the mine permit to enable the collection of permit fees over the entire life of the mine. The revision also defines the life of the mine to mean the term of the permit and the time required to successfully complete all surface coal mining and reclamation activities and obtain a full release of the performance bond for each bonded area.

We find that Alabama's proposed amendments do not make its rules or regulations less effective than the Federal regulations governing permit fees found at 30 CFR 777.17. Therefore, we are approving Alabama's revision.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment. As noted in section II, we received 13 comments (Administrative Record No. AL–0671–03). The 13 commenters provided comments that were outside the scope of the proposed amendment and not germane to the topic of surface coal mining in general. We are not addressing these comments in this final rule for these reasons. The full texts of these comments are available at *www.regulations.gov.*

Federal Agency Comments

On July 27, 2017, pursuant to 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Alabama program (Administrative Record No. AL–0671–02). We did not receive any comments.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Alabama proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment. However, on July 27, 2017, under 30 CFR 732.17(h)(11)(i), we requested comments from the EPA on the amendment (Administrative Record No. AL–0671–02). The EPA did not respond to our request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On July 27, 2017, we requested comments on the amendment (Administrative Record No. AL–0671–02). We did not receive any comments.

V. OSMRE's Decision

Based on the above findings, we are approving the Alabama amendment that was submitted on June 21, 2017, (Administrative Record No. AL–0671).

To implement this decision, we are amending the Federal regulations at 30 CFR part 901 that codify decisions concerning the Alabama program. In accordance with the Administrative Procedure Act, this rule will take effect 30 days after the date of publication. Section 503(a) of SMCRA requires that the State's program demonstrate the State has the capability of carrying out the provisions of the Act and meeting its purposes. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

This rulemaking does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

Pursuant to Office of Management and Budget (OMB) Guidance dated October 12, 1993, the approval of state program amendments is exempted from OMB review under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has reviewed this rule as required by Section 3(a) of Executive Order 12988. The Department has determined that this **Federal Register** document meets the criteria of Section 3 of Executive Order 12988, which is intended to ensure that the agency review its legislation and proposed regulations to minimize litigation; and that the agency's legislation and regulations provide a clear legal standard for affected conduct rather than a general standard, and promote simplification and burden reduction. Because Section 3 focuses on the quality of Federal legislation and regulations, the Department limited its review under this Executive Order to the quality of this **Federal Register** document and to changes to the Federal regulations. The review under this Executive Order did not extend to the language of the State regulatory program or to the program amendment that the State of Alabama drafted.

Executive Order 13132—Federalism

This rule is not a ''[p]olicy that [has] Federalism implications'' as defined by Section 1(a) of Executive Order 13132, because it does not have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Instead, this rule approves an amendment to the Alabama program submitted and drafted by that State. OSMRE reviewed the submission with fundamental federalism principles in mind as set forth in Section 2 and 3 of the Executive Order and with the principles of cooperative federalism as set forth in SMCRA. *See, e.g.,* 30 U.S.C. 1201(f). As such, pursuant to Section 503(a)(1) and (7) (30 U.S.C. 1253(a)(1) and (7)), OSMRE reviewed the program amendment to ensure that it is ''in

accordance with'' the requirements of SMCRA and ''consistent with'' the regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rulemaking on Federally-recognized Tribes and have determined that the rulemaking does not have substantial direct effects on one or more Tribes, on the relationship between the Federal government and Tribes, or on the distribution of power and responsibilities between the Federal Government and Tribes. The basis for this determination is that our decision is on a State regulatory program and does not involve Federal regulations involving Indian lands.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

Executive Order 13211 of May 18, 2001, requires agencies to prepare a Statement of Energy Effects for a rulemaking that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rulemaking is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rulemaking does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rulemaking does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rulemaking, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rulemaking would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rulemaking is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rulemaking: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rulemaking, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rulemaking will not impose an unfunded mandate on State, local, or Tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rulemaking, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 901

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 16, 2018.

Alfred L. Clayborne,

Regional Director, Mid-Continent Region.

For the reasons set out in the preamble, 30 CFR part 901 is amended as set forth below:

PART 901—ALABAMA

■ 1. The authority citation for part 901 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 901.15 is amended in the table by adding an entry for ''Code of Alabama Section 9–16–83'' in chronological order by ''Date of final publication'' to read as follows:

§ 901.15 Approval of Alabama regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* * * * * * *		
June 21, 2017	August 29, 2018	Code of Alabama Section 9–16–83.

[FR Doc. 2018–18719 Filed 8–28–18; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

[SATS No. OH–255–FOR; Docket No. OSM–2013–0012; S1D1SSS08011000SX066A000178S180110; S2D2SSS08011000SX066A00017XS501520]

Ohio Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment with two exceptions.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) is approving, with two exceptions, an amendment to the Ohio regulatory program (the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Ohio's submission demonstrates its intent to revise its program by amending the Ohio Reclamation Commission's (the Commission) procedural rules. By submission of the amended procedural rules, found within Ohio Administrative Code (OAC) at sections 1513–3–01 through 1513–3–22, Ohio proposed to revise the Ohio program pursuant to the additional flexibility afforded by the revised Federal regulations at 30 CFR 732.17, and SMCRA, as amended. As a result of review of the Ohio program, the proposed amendment, and an opportunity for public comments, OSMRE has determined that the majority of the submittal is no less stringent than SMCRA and no less effective than the corresponding regulations. The two revisions not approved by OSMRE are found within OAC at section 1513–3–07(A), which relates to intervention. OSMRE's rationale for not approving these proposed revisions is explained in depth below.

DATES: *Effective Date:* September 28, 2018.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Owens, Chief, Pittsburgh Field Division, OSMRE, Three Parkway Center, 2nd Floor, Pittsburgh, Pennsylvania 15220. Telephone: (412) 937–2827. Email: *bowens@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program

Section 503(a) of SMCRA allows a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, state laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Ohio program effective August 16, 1982. Notice of the conditional approval of Ohio's permanent regulatory program was published in the **Federal Register** on August 10, 1982 (47 FR 34688). You can also find later actions concerning Ohio's program and program amendments at 30 CFR 935.11, 935.15, and 935.30.

II. Submission of the Proposed Amendment

For background purposes, the Commission is an adjudicatory board established pursuant to Ohio Revised Code (ORC) section 1513.05. The Commission is the office to which administrative appeals may be filed by any person claiming to be aggrieved or adversely affected by a decision of the Ohio Department of Natural Resources, Chief of the Division of Mineral Resources Management (DMRM), relating to mining and reclamation issues. Following an adjudicatory hearing, the Commission affirms, vacates, or modifies the DMRM Chief's decision. The Commission is comprised of eight members appointed by the Governor of Ohio. Members represent a variety of interests relevant to mining and reclamation issues. The Commission adopts rules to govern its procedures. The Commission's rules are found at OAC section 1513–3–01 through 1513–3–22 and are the subject of the current amendment to the Ohio program. By letter dated November 6, 2013, Ohio submitted an amendment to its program, (Administrative Record No. OH–2192–01). Ohio's submittal was prompted by requirements within the Ohio statute that all state agencies must review their administrative rules every five years. Consistent with this requirement, the Commission revised its rules to ensure an orderly, efficient, and effective appeal process. By submitting the amendment to OSMRE, Ohio exercised its ability to revise the Ohio program pursuant to the additional flexibility afforded by the revised Federal regulations at 30 CFR 732.17, and SMCRA, as amended, to improve operational efficiency of the Ohio program and to ensure Ohio's proposed provisions are consistent, and in accordance, with SMCRA and are no less effective than the corresponding Federal regulations.

OSMRE announced receipt of the proposed amendment in the May 20, 2014, **Federal Register** (79 FR 28854). In the same document, OSMRE opened the public comment period and provided an opportunity for a public hearing or meeting.

OSMRE did not hold a public hearing or meeting, as neither were requested. The public comment period closed on June 19, 2014. OSMRE did not receive any comments.

III. Summary of the Ohio Amendment and OSMRE's Findings on the Amendment

Following is a summary of various provisions of the amendment that Ohio submitted, as well as OSMRE's findings on whether those provisions are consistent, and in accordance, with SMCRA and are no less effective than the Federal regulations at 30 CFR 732.15 and 732.17. As described below, OSMRE is approving the amendment with the exception of two provisions in the proposed rule, one at section 1513–3–07(A), relating to the intervention of a party, and the other at 1513–3–07(D)(4), relating to the effect of intervention. Any revisions that we do not specifically discuss below concern non-substantive wording or editorial changes.

1513–3–01 Definitions

These changes clarify existing definitions and provide additional definitions. Specifically, the definition of ''appellant'' is clarified to explicitly state that actions of the DMRM Chief are subject to appeal to the Commission. The definition of ''final order'' clarifies that the resolution of matters presented on appeal will be in writing and consistent with section 1513–3–19 of the OAC. The definition of ''full party'' is added. This definition will define ''full party'' to include the appellant, the appellee, and any intervenor participating in an appeal as defined by the OAC at section 1513–3–07 entitled, ''Intervention.'' Additionally, the term, ''interested persons in an appeal pending before the Commission'' is added. This term, as approved, defines interested person as the appellant, the appellee, any intervenors, or and any other persons who have notified the Commission of an interest in a pending appeal and have requested to be notified of hearings in said appeal. The

definition of ''intervenor'' is modified to remove the word ''one'' and replace it with the term, ''any person.'' The definition of ''person'' is modified to encompass limited liability companies. Within the definition of ''regular business hours'' the terms ''chairman'' and ''vice-chairman'' are replaced by ''chairperson'' and ''vice-chairperson,'' respectively. The remaining modifications renumber the terms to facilitate the addition of new terms.

OSMRE Finding: We have determined that the definitions of ''appellant,'' ''final order,'' ''full party,'' ''interested persons in an appeal pending before the Commission,'' and ''regular business hours'' do not have Federal counterparts. However, they are not inconsistent with SMCRA or the Federal regulations. Therefore, we approve these definitions. The revised definition of ''intervenor'' remains consistent with its Federal counterpart at 43 CFR 4.1110 and is therefore approved. There is no direct Federal counterpart to the revised portion of Ohio's definition of ''person,'' as the Federal counterpart does not specifically include limited liability companies. However, the Federal definition does include corporations and partnerships; limited liability companies are essentially amalgams of those two business structures. Therefore, the change to the State's definition does not render it inconsistent with the Federal regulations at 30 CFR 700.5, and we are approving the change.

1513–3–02 Internal Regulations

Paragraph (B) of Section 1513–3–02, which is entitled, ''Quorum,'' is modified to clarify the conditions for satisfying quorum requirements. Four members of the Commission must be present to qualify as a quorum, and an action by the Commission is not valid unless at least four members concur.

Additionally, the rule clarifies the procedure in the event concurrence is not reached. As amended, four members must agree that concurrence is not met. Further, when concurrence is not met, the existing record of proceedings is to be submitted to all members of the Commission who did not attend any portion of the proceedings. These members may determine if they wish to participate in the appeal. Following review of the record, they must participate in the rendering of a decision. The provision for a tied vote is eliminated.

The amendment provides that, in the event that a concurrence cannot be reached, a decision must be rendered stating such and an Order must be issued affirming the action of the DMRM Chief under review.

Furthermore, the rule clarifies that in the event a Commission member considered as part of the quorum misses any part of the proceeding, he or she must review the record before participating in the rendering of a decision. Audio-electronic hearings before the Commission constitute the official record of the hearing. However, other methods of creating the official record are permitted upon the Commission's discretion, by joint motion of the parties, or by motion of a party and subsequent approval by the Commission. Additionally, the issuance and service of subpoenas must comply with the Ohio Rules of Civil Procedure, and, as applicable, section 119.094 of the ORC, including its requirement that a fee must be paid to witnesses outside the county in which a hearing must be held.

OSMRE Finding: We have determined that the provisions in this section do not have direct Federal counterparts. However, they are not inconsistent with the Federal regulations at 43 CFR 4.2, which governs, generally, membership of administrative boards and decisions of those boards. Therefore, we approve the proposed changes to OAC 1513–3–02.

1513–3–03 Appearance and Practice Before the Commission

The rule clarifies that any party may appear on their own behalf or may be represented by an attorney at law admitted to practice according to Ohio law. This includes the admittance of attorneys *pro hac vice.*

OSMRE Finding: We have determined that the provisions in this section are consistent with the Federal regulations at 43 CFR 1.3 and 4.3, which govern, respectively, who may practice in Departmental administrative proceedings, and representation before appeals boards. Therefore, we approve the changes to OAC 1513–3–03.

1513–3–04 Appeals to the Reclamation Commission

Although the majority of the changes to this section are clerical and non-substantive, the rule clarifies that email addresses, if available, should be included in the notice of appeal. Additionally, appellants must include a copy of the written notice, order or decision of the DMRM Chief to be reviewed. Appellants are required to comply with the requirements of section 1513.02 of the ORC, pertaining to the power and duties of the DMRM Chief, and must include and forward the amount of any penalty for placement in a penalty fund. The rule adds a section describing information that the appellant may include in the notice of appeal. Appellants may, but are not required to, identify the area to which the notice, Order, or decision relates; state whether or not the Commission is requested to view the site; and state whether or not the appellant waives the right to have the hearing within the time frames established in section 1513.13(B), Appeal of notice of violation, order or decision to reclamation commission of the ORC.

When filing a notice of appeal pertaining to the review of a decision to approve or disapprove a permit application, an appellant must comply with section 1513.07, Coal mining and reclamation permit of the ORC, and must file the notice of appeal within 30 days of notice of the DMRM Chief's determination.

It is further clarified that a notice of appeal is deemed filed when complete notice has been provided. Further, a notice of appeal may be amended without leave of the Commission during the time allowed for original filing. However, amendment of a notice of appeal may not be employed to cure jurisdictional defects in the filing following the close of this time period. Following the close of this time period, a notice of appeal may be amended by leave of the Commission.

OSMRE Finding: We have determined that the provisions in this section are consistent with the Federal regulations governing the varying types of administrative appeals of decisions of OSMRE. These regulations are at 43 CFR 4.1107, 4.1115, 4.1153, 4.1164, 4.1184, 4.1263, 4.1282, 4.1303, 4.1363, 4.1372, and 4.1382. Therefore, we approve the changes to OAC 1513–3–04.

1513–3–05 Filing and Service of Papers

This section of the rule clarifies that the filing of a notice of appeal must conform to section 1513.13 of the ORC, Appeal to the Commission. The rule alters the definition of when a notice of appeal is deemed filed. The proposed amendment states that a notice of appeal will be deemed filed when received or if the notice of appeal is sent by certified mail, registered mail, or express mail, it will be deemed filed on the date of the postmark placed upon the sender's receipt by the postal service. However, documents requesting temporary relief are deemed filed when received by the Commission. Additionally, all filings other than a notice of appeal or a request for temporary relief, that are not sent to the Commission by certified mail, registered

mail, or express mail will be deemed filed with the Commission on the day on which the filings are received, and those that are sent by such means, will be deemed filed on the postmark date placed upon the sender's receipt by the postal service. Further, following initiation of an appeal, the Commission may, through order, establish a filing and service protocol, which may include the electronic transmission of documents.

OSMRE Finding: We have determined that the provisions in this section are consistent with the Federal regulations at 43 CFR 4.1107, which governs the filing of documents, and 43 CFR 4.1109, which governs service of documents. Therefore, we approve the changes to OAC 1513–3–05.

1513–3–06 Computation and Extension of Time

The majority of the changes to this section are non-substantive and consist of renumbering for clarity. However, section (C)(1) is altered to definitively read that the Commission may not lengthen or reduce the time period allowed for any response to, or filing of, a request for temporary relief.

OSMRE Finding: We have determined that the provisions in this section do not have direct Federal counterparts. However, they are not inconsistent with the Federal regulations at 43 CFR 4.1261 and 4.1264, which govern, respectively, applications for temporary relief and responses thereto. Therefore, we approve the changes to OAC 1513–3–06.

1513–3–07 Intervention

Ohio submitted a revision to this rule to require that any person seeking leave to intervene in an appeal before the Commission must do so within ten days prior to the beginning of an evidentiary hearing on the merits of an appeal, unless waived by the Commission for extraordinary cause. OSMRE is not approving this section of the amendment as it is inconsistent with the corresponding provisions of the Federal regulations found at 43 CFR 4.1110(a). The Federal counterpart allows any person, including a State or OSMRE, to petition to intervene at any stage of a proceeding. The provision proposed by Ohio prejudices a potential intervenor by imposing time limits on petitions to intervene. Although the proposed revision would allow intervention after the ten days preceding an evidentiary hearing, upon waiver by the Commission, the potential intervenor must still demonstrate extraordinary cause. This additional hurdle is not imposed by the Federal counterpart. Therefore, OSMRE is not approving the following sentence in section 1513–3–07(A), of the proposed amendment: ''A petition for leave to intervene must be filed at least ten days prior to the beginning of an evidentiary hearing on the merits of an appeal, unless waived by the commission for extraordinary cause.''

Also, the deletion of 1513–3–07(D)(4) is less effective than the Federal regulations found at 43 CFR 4.1110. This deletion would prevent the Commission from considering the effect of intervention on the agency's ability to implement its statutory mandates. However, the Federal regulation at 43 CFR 4.1110(d)(4) explicitly allows the IBLA to consider this effect in deciding whether intervention is appropriate. The deletion of this provision in the OAC would render the Ohio program less effective by preventing its statutory mandate from receiving due consideration in Commission decisions on intervention. Therefore, OSMRE is not approving the deletion of OAC 1513–3–07(D)(4).

There is only one other substantive amendment to this section. The change, at section 1513–13–07(F), will allow the filing of amicus briefs and oral argument at hearing by amicus curiae upon leave by, and at the discretion of, the Commission. This provision does not have direct Federal counterparts. However, it is not inconsistent with relevant sections of 43 CFR part 4. Therefore, this provision of OAC 1513–3–07 is approved.

1513–3–08 Temporary Relief

The amendments to this section are non-substantive and primarily consist of language to make references gender neutral. Therefore, the amendments are approved.

1513–3–10 Discovery

Previous discovery rules are amended to clarify parties to an appeal may obtain discovery in accordance with the provisions of rules 26 through 36 of the Ohio Rules of Civil Procedure. Additionally, the rule explains that all parties, including intervenors, are subject to discovery and that discovery from non-parties must be done through subpoena. In the event a party fails to obey an order to compel or permit discovery issued by the Commission, the Commission may make such orders in regard to the failure as it deems just.

OSMRE Finding: We have determined that the provisions in this section are consistent with the Federal regulations at 43 CFR 4.1130 through 4.1141. Therefore, we approve the changes to OAC 1513–3–10.

1513–3–11 Motions

This revision moves the provision at section (B), which allows a party to make a written motion requesting a hearing to be conducted before the full Commission, rather than before a hearing officer for the Commission, to section 1513–3–18, Reports and recommendations of the hearing officer. The revision to this section also provides that objections to jurisdiction are non-waivable and may be raised at any point in an appeal, consistent with the Ohio Rules of Civil Procedure.

OSMRE Finding: We have determined that the provisions in this section do not have direct Federal counterparts. However, they are not inconsistent with the Federal regulations at 43 CFR 4.1112. Therefore, we approve OAC 1513–3–11.

1513–3–12 Pre-Hearing Procedures

This revision allows the Commission or its hearing officer, at its own initiative, or at the request of any party, to schedule and hold pre-hearing conferences on issues on appeal.

OSMRE Response: We have determined that the proposed change to this section is consistent with 43 CFR 4.1121(b). Therefore, we are approving the change to OAC 1513–3–12.

1513–3–14 Site Views and Location of Hearings

This rule specifies the locations of Commission hearings. It also clarifies the circumstances in which the Commission will conduct site views of mining operations, reclamation operations, or other relevant features. The rule also explicitly states that the Commission will control and direct the manner of conducting a site view. Specifically, where a site view is conducted on property subject to a mining and reclamation permit, parties must be informed prior to the site view of any necessary personal protective equipment, including hard hat, safety glasses, hearing protection, safety-toed shoes or boots and additional equipment that may be required on mine property as determined by the mine operator. Additionally, the Commission reserves the right to limit the number of persons who participate in the site view. Additionally, a hearing related to a cessation of mining or a motion for temporary relief must be held in proximity to the subject area of the hearing for the convenience of the Commission and the parties. All other proceedings will continue to be held in Columbus, Ohio, or at any convenient public location selected by the Commission.

OSMRE Response: We have determined that the provision regarding the location for hearings related to temporary relief, has no direct Federal counterpart, but is not inconsistent with the Federal regulation found at 43 CFR 4.1106, which governs location of hearing sites, generally. The Federal regulation states that the administrative law judge must consider convenience of the parties in determining the hearing site. The remaining provisions in this section do not have Federal counterparts. However, they are not inconsistent with SMCRA or its implementing regulations. Therefore, we are approving the changes to OAC 1513–3–14.

1513–3–15 Consolidation of Proceedings

The Commission is given discretion to administer consolidated appeals in the manner it deems most appropriate.

OSMRE Response: We have determined that the provision in this section is consistent with the Federal regulation at 43 CFR 4.1113, which grants the administrative law judge the authority to consolidate proceedings. Therefore, we are approving OAC 1513–3–15.

1513–3–16 Conduct of Evidentiary Hearings

This rule applies to any person participating in an appeal before the Commission and definitively states that the Commission will determine the conduct of the hearing and the order of the presentation of evidence. Additionally, it further clarifies that the Commission is not bound by the formal rules of evidence as promulgated by the Ohio Supreme Court. The rule also establishes a procedure for in-camera inspection of documents claimed to contain proprietary business information or trade secrets. Additionally, the rule specifically details the number of copies of proposed exhibits a party must make available. The rule also adds a provision to clarify that a continuing objection is sufficient to preserve objection to an area of evidence. In regard to written testimony, affidavits may be admitted only if the evidence is otherwise admissible and all full parties agree that affidavits may be used in lieu of oral testimony. This alteration is limiting as it adds the adjective ''full,'' thus excluding certain parties. Parties wishing to use affidavits in lieu of oral testimony must serve all full parties with a copy of the affidavit at least 15 days before a hearing. It is clarified that in the event a declarant is unavailable, testimony may be offered in compliance with rule 804 of the Ohio Rules of Evidence. As proposed, objections to deposition testimony must be resolved in accordance with rule 32 of the Ohio Rules of Civil Procedure. Further, in instances when a party is attempting to use written testimony, any full party must present the Commission a schedule of objections to the written testimony prior to the commencement of the hearing. This is a change to the former rule that allowed objection at the hearing following receipt of the testimony into evidence. Regarding the presentation of witnesses, the Commission may require that a witness be called only once during a hearing and that the parties conduct all examinations at the time when the witness is called to testify. An Ohio notary may be given authority to administer oaths and affirmations to witnesses. Further, the Commission is given authority to require the parties to submit written closing arguments, post-hearing briefs, or proposed findings of fact and conclusions of law.

OSMRE Finding: We have determined that the provisions in this section are not inconsistent with the Federal regulations found at 43 CFR 4.1120–4.1129. Therefore, we are approving the changes to OAC 1513–3–16.

1513–3–17 Voluntary Dismissal and Settlement

The adjective ''full'' is added to section (B), relative to agreement to settle. This addition limits settlements to those where all parties (*i.e.,* appellant, appellee, and intervenor, if any) agree to do so. In the event an appeal is settled during the course of a hearing, the parties must enter into the record a statement acknowledging that they have reached an agreement that all issues have been resolved, and that a withdrawal of the appeal will be filed.

OSMRE Finding: We have determined that the provisions in this section are consistent with the Federal regulations at 43 CFR 4.1111. Therefore, we are approving the changes to OAC 1513–3–17.

1513–3–18 Reports and Recommendations of the Hearing Officer

Section 1513–3–11(B), discussed above, is inserted in this section. This section allows a party to make a written motion requesting that a hearing be conducted before the full Commission, rather than before a hearing officer for the Commission.

The existing regulations required Reports and Recommendations of hearing officers to be submitted to the Commission within a time reasonably sufficient to allow the Commission to issue timely Orders. This amendment incorporates a proviso to that rule that in the event a decision before a hearing officer must be rendered within a specified time period, the appeal will be heard by the Commission, rather than by a hearing officer, unless there has been a waiver of the right to an expedited hearing.

OSMRE Findings: We have determined that the provisions in this section do not have direct Federal counterparts. However, these provisions are not inconsistent with the Federal regulations at 43 CFR 4.1120 through 4.1129. Therefore, we are approving the changes to OAC 1513–3–18.

1513–3–19 Decisions of the Commission

This rule clarifies the procedures the Commission will follow when issuing decisions. Additionally, the rule allows the remission, within 30 days after issuing a final decision, of pre-paid civil penalties, where penalties are under appeal. The rule also provides more detailed information about the procedures that will be followed if errors are found in Commission decisions. Specifically, during the time period after a final decision has been issued by the Commission, clerical mistakes in the final decision and errors therein from oversight or omission may be corrected before an appeal of the Commission's final decision is filed. Thereafter, while an appeal is pending before an appellate court, a final decision may be so corrected with leave of the court. However, the correction of a clerical mistake or error in a final decision does not extend the time for filing a notice of appeal in the appellate court. Further, this rule extends the time the Commission may remit, transfer, or accept payment of an increased penalty assessment amount from fifteen days to thirty days.

OSMRE Finding: We have determined that most of the provisions in this section do not have direct Federal counterparts. However, these provisions are not inconsistent with SMCRA or its implementing regulations, nor inconsistent with Departmental hearings and appeals regulations found at 43 CFR part 4, subparts B and L. Moreover, the amendments pertaining to civil penalties are consistent with the Federal regulations at 43 CFR 4.1157. Therefore, we are approving the changes to OAC 1513–3–19.

1513–3–20 Costs

The former ''Costs'' section is rescinded. Previously, this section allowed the Commission to assess costs

against a party to an appeal. The Commission does not, *sua sponte,* assess such costs, and the rule has not been used by the Commission. Moreover, filing fees are not required for Commission appeals. Additionally, the award of costs and expenses, following petition, are addressed fully in the following section, *Awards of Costs and Expenses.*

OSMRE Findings: We have determined that the provisions removed by rescission of this section are replaced by the provisions described in OAC 1513–3–21. As discussed in the *OSMRE Findings* for OAC 1513–3–21, we have determined that the provisions in the latter section are not inconsistent with SMCRA or regulations at 43 CFR part 4, subparts B and L. Therefore, OSMRE determines the rescission of this section does not render the Ohio program inconsistent with the Federal regulations at 43 CFR 4.1290 through 4.1296, and the rescission is approved.

1513–3–21 Award of Costs and Expenses

This rule clarifies the previous version of this rule approved by OSMRE in 2010. *See* 75 FR 72947, allowing for the recovery of costs and expenses, including attorneys' fees to certain parties. The amendment clarifies that the Commission is also authorized to hear petitions for costs, including attorneys' fees and expenses, where petitions are filed by the DMRM and allege bad faith or harassment by another party. These petitions must conform to section 1513.13 of the ORC. Petitions must be filed within 60 days of receipt of the final decision of the Commission in the action in which the fees were incurred. Petitions by the DMRM must include an affidavit detailing all costs and expenses, receipts, and when attorneys' fees are requested, evidence that the hours expended and the fees requested are reasonable for the appeal and for the locality. A person served with a copy of a petition for costs and expenses must file an answer thereto within 30 days. Awards of attorney fees are appealable consistent with the ORC. This rule clarifies that parties may receive awards of costs and expenses, including attorneys' fees, expert witness fees, and fees reasonably incurred as a result of proceedings before the Commission, and specifies that fees incurred in seeking fees may also be awarded.

However, the rule at 1513–3–21(D) clarifies that Ohio's statute and regulations relevant to minerals—not including coal or peat, found within Chapter 1514 of the Revised Code, do not include an award of costs and expenses provision similar to those required in Chapter 1513. Specifically, Ohio's rule references the provision found within section 1514.09 that specifically explains that attorneys' fees, costs, and expenses may not be recovered for minerals. Chapter 1514 is not required to be consistent with SMCRA or its implementing regulations, as it does not pertain to coal regulation. Because Chapter 1514 is not part of the approved Ohio program, OSMRE is not making a determination on this portion of the Ohio rule.

OSMRE Findings: We have determined that the provisions in this section are no less effective than the Federal regulations at 43 CFR 4.1290–4.1296. Therefore, we approve the changes to OAC 1513–3–21.

1513–3–22 Appeals From Commission Decisions

This rule clarifies that parties to actions involving coal mining and reclamation brought under section 1513 of the ORC may seek review of a Commission decision in the court of appeals for the county in which the activity addressed by the decision of the Commission occurred, is occurring, or will occur. Moreover, this rule clarifies that parties to actions involving industrial minerals mining and reclamation and brought under section 1514.09, Representation on commission for appeals, of the ORC may seek review of a Commission decision in the court of common pleas in the county where the operation addressed by the decision of the Commission is located, or in the Franklin County Court of Common Pleas. However, Chapter 1514 is not required to be consistent with SMCRA or its implementing regulations, as it does not pertain to coal regulation. Because Chapter 1514 is not part of the approved Ohio program, OSMRE is not making a determination on this portion of the Ohio rule.

Additionally, the rules provide the Commission with the authority to control the transcription and transmission of the record to the appropriate appellate court.

OSMRE Findings: We have determined that the provisions in this section are consistent with Section 526 (a)(2) of SMCRA (30 U.S.C. 1276(a)(2)), and with the Federal regulations at 30 CFR 775.13(b) and 43 CFR 4.1369. Therefore, we are approving the changes to OAC 1513–3–22.

IV. Summary and Disposition of Comments

Public Comments

OSMRE asked for public comments in the May 20, 2014, **Federal Register** (79 FR 28854) (Administrative Record No. OH–2192–04). OSMRE did not receive any public comments or a request to hold a public meeting or public hearing.

Federal Agency Comments

Under Federal regulations at 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, OSMRE requested comments on the amendment from various Federal agencies with an actual or potential interest in the Ohio program (Administrative Record No. OH–2192–02). Specifically, OSMRE solicited comment from the Advisory Council on Historic Preservation, the United States Department of Labor, the United States Fish and Wildlife Service, the United States Environmental Protection Agency (EPA), the Ohio Historic Preservation Office, and the United States Department of Agriculture. OSMRE did not receive any response to the request for comments.

Environmental Protection Agency Concurrence and Comments

Pursuant to the Federal regulations at 30 CFR 732.17(h)(11)(ii), OSMRE is required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that Ohio proposed in the submittal pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment, and as stated above, EPA did not provide comment.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. OSMRE requested comments on the Ohio amendment (Administrative Record Number OH–2192–02). We did not receive any comments.

V. OSMRE's Decision

Based on the above findings, we approve the amendment Ohio sent us on November 6, 2013, (Administrative Record Number OH–2192–01) with the exception of two provisions. We are not approving the sentence in section 1513–

3–07(A), as explained above: ''A petition for leave to intervene must be filed at least ten days prior to the beginning of an evidentiary hearing on the merits of an appeal, unless waived by the commission for extraordinary cause.'' We are also not approving the deletion of 1513–3–07(D)(4), as explained above: ''The effect of intervention on the agency's implementation of its statutory mandate.''

To implement this decision, we are amending the Federal regulations at 30 CFR part 935 that codify decisions concerning the Ohio program. In accordance with the Administrative Procedure Act, this rule will take effect 30 days after the date of publication. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations. Other changes implemented through this final rule notice are administrative in nature and have no takings implications.

Executive Order 12866—Regulatory Planning and Review

Pursuant to Office of Management and Budget (OMB) Guidance dated October 12, 1993, the approval of state program amendments is exempted from OMB review under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has reviewed this rule as required by section 3(a) of Executive Order 12988. The Department determined that this **Federal Register** notice meets the criteria of Section 3 of Executive Order 12988, which is intended to ensure that the agency review its legislation and proposed regulations to eliminate drafting errors and ambiguity; that the agency write its legislation and regulations to minimize litigation; and that the agency's legislation and regulations provide a clear legal standard for affected conduct rather than a general standard, and promote simplification and burden reduction. Because Section 3 focuses on the quality of Federal legislation and regulations, the Department limited its review under this Executive Order to the quality of this **Federal Register** notice and to changes to the Federal regulations. The review under this Executive Order did not extend to the language of the State regulatory program or to the program amendment that the State of Ohio drafted.

Executive Order 13132—Federalism

This rule is not a ''[p]olicy that [has] Federalism implications'' as defined by section 1(a) of Executive Order 13132 because it does not have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Instead, this rule approves an amendment to the Ohio program submitted and drafted by that State. OSMRE reviewed the submission with fundamental federalism principles in mind as set forth in sections 2 and 3 of the Executive Order and with the principles of cooperative federalism set forth in SMCRA. See, *e.g.,* 30 U.S.C. 1201(f). As such, pursuant to section 503(a)(1) and (7) (30 U.S.C. 1253(a)(1) and (7)), OSMRE reviewed the program amendment to ensure that it is ''in accordance with'' the requirements of SMCRA is ''consistent with'' the regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Government

In accordance with Executive Order 13175, OSMRE has evaluated the potential effects of this rule on Federally recognized Indian tribes and has determined that the rule does not have substantial direct effects on one or more Indian tribes, or the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. The basis for this determination is that our decision pertains to the Ohio regulatory program and does not involve a Federal program involving Indian lands or Indian tribes in any way.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

Executive Order 13211 of May 18, 2001, which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions, including amendments thereto, do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)). It is further documented in the DOI Departmental Manual at 516 DM 13.5 that agency decisions on approval of State regulatory programs do not constitute major Federal actions.

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Ohio's submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, geographic regions, or Federal, State, or local government agencies; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon

counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 13, 2018.

Thomas Shope,

Regional Director, Appalachian Region.

For the reasons set out in the preamble, 30 CFR part 935 is amended as set forth below:

PART 935—OHIO

■ 1. The authority citation for part 935 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 935.12 is added to read as follows:

§ 935.12 State statutory, regulatory, and proposed program amendments not approved.

(a) In OAC 1513–3–07(A), we are not approving the following sentence: ''A petition for leave to intervene must be filed at least ten days prior to the beginning of an evidentiary hearing on the merits of an appeal, unless waived by the commission for extraordinary cause.''

(b) In OAC 1513–3–07(D) (4), we are not approving the deletion of the following sentence: ''The effect of intervention on the agency's implementation of its statutory mandate.''

■ 3. Section 935.15 is amended in the table by adding a new entry in chronological order by ''Date of final publication'' to read as follows:

§ 935.15 Approval of Ohio regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* * * * * * *		
November 6, 2013	August 29, 2018	OAC 1513–3–01 through 1513–3–22, except for a portion of OAC 1513–3–07(A) and the deletion of OAC 1513–3–07(D)(4).

[FR Doc. 2018–18706 Filed 8–28–18; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2018–0779]

Drawbridge Operation Regulation; Passaic River, Harrison, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Route 280 Bridge across the Passaic River, mile 5.8, at Harrison, New Jersey. The deviation is necessary to perform steel repairs at the lift span. This deviation allows the bridge to remain closed during the construction period.

DATES: This deviation is effective from 12:01 a.m. on October 1, 2018, until 11:59 p.m. on December 14, 2018.

ADDRESSES: The docket for this deviation, USCG–2018–0779, is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Judy K. Leung-Yee, Bridge Management Specialist, First District Bridge Branch, U.S. Coast Guard; telephone 212–514–4336, email *Judy.K.Leung-Yee@uscg.mil.*

SUPPLEMENTARY INFORMATION: The owner of the bridge, New Jersey Department of Transportation, requested a temporary deviation in order to perform steel repairs at the lift span.

The Route 280 Bridge across the Passaic River, mile 5.8, at Harrison, New Jersey is a vertical lift bridge with a vertical clearance of 35 feet at mean high water and 40 feet at mean low water in the closed position. The existing drawbridge operating regulation is listed at 33 CFR 117.739(h).

This temporary deviation will allow the Route 280 Bridge to remain in the closed position from 12:01 a.m. on October 1, 2018, to 11:59 p.m. on December 14, 2018. The deviation will have minimal effect on navigation. The waterway is transited by recreational and commercial vessels. Coordination with waterway users has indicated no objection to the closure of the draw. Vessels able to pass through the bridge in the closed position may do so at any time. The bridge will not be able to open for emergencies. There is no immediate alternate route for vessels to pass.

The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessel operators can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: August 23, 2018.

C.J. Bisignano,

Supervisory Bridge Management Specialist, First Coast Guard District.

[FR Doc. 2018–18638 Filed 8–28–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2018–0751]

Drawbridge Operation Regulation; Sloop Channel, Hempstead, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Meadowbrook State Parkway Bridge across Sloop Channel, mile 12.8, at Hempstead, NY. The deviation is necessary to complete structural, mechanical, and electrical rehabilitations on the bridge. This temporary deviation allows the bridge to remain in the closed-to-navigation position for two short periods, and allows the bridge to open only one bascule span at a time over various periods to facilitate bridge repairs.

DATES: This deviation is effective from 7 a.m. on September 28, 2018 to 7 a.m. on December 13, 2018.

ADDRESSES: The docket for this deviation, USCG–2018–0751 is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH''. Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Stephanie E. Lopez, Bridge Management Specialist, First District Bridge Branch, U.S. Coast Guard; telephone 212–514–4335, email *Stephanie.E.Lopez@uscg.mil.*

SUPPLEMENTARY INFORMATION: The owner of the bridge, the New York State Department of Transportation, requested a temporary deviation to facilitate the various structural, mechanical, and electrical rehabilitations. The spanlock platforms and machinery for both the Northbound and Southbound Bridge will be replaced in their entirety. Trunnion tower and rack gear supports repairs will be performed, and the bridge instrumentation will be replaced. The Meadowbrook State Parkway Bridge across the Sloop Channel, mile 12.8, has a vertical clearance in the closed position of 22 feet at mean high water and 25 feet at mean low water. The existing bridge operating regulations are found at 33 CFR 117.799(h).

This temporary deviation allows the Meadowbrook State Parkway Bridge to open only one bascule span at a time between 7 a.m. and 3 p.m., providing a minimum of 43 feet of available horizontal clearance, on the following days: September 28, 2018; October 1–5, 2018; November 26–30, 2018; and December 3, 2018.

Additionally, the Meadowbrook State Parkway Bridge shall remain in the closed position from 7 a.m. on October 15, 2018 through 7 a.m. on October 17, 2018 and from 7 a.m. on December 11, 2018 to 7 a.m. December 13, 2018.

The waterway is transited by commercial and recreational traffic. The Coast Guard notified known waterway users and there were no objections to this temporary deviation. Vessels able to pass under the bridge in the closed position may do so at any time. The bridge will not be able to open for emergencies and there is no immediate alternate route for vessels to pass.

The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessel operators can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: August 23, 2018.

C.J. Bisignano,

Supervisory Bridge Management Specialist, First Coast Guard District.

[FR Doc. 2018–18637 Filed 8–28–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2018–0754]

Drawbridge Operation Regulation; Saugatuck River, Saugatuck, CT

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Metro-North SAGA Bridge across the Saugatuck River, mile 1.1 at Saugatuck, Connecticut. The deviation is necessary to conduct bridge maintenance and repair work. The deviation allows the bridge to remain closed to maritime navigation on weekdays and requires the bridge to open with 24 hours advance notice on weekends.

DATES: This deviation is effective from 8 a.m. on September 17, 2018, to 8 a.m. on October 29, 2018.

ADDRESSES: The docket for this deviation, USCG–2017–0754, is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH''. Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Jeffrey Stieb, Bridge Management Specialist, First Coast Guard District, Coast Guard; telephone 617–223–8364, email *Jeffrey.D.Stieb@uscg.mil.*

SUPPLEMENTARY INFORMATION: The owner of the bridge, Connecticut Department of Transportation, requested a temporary deviation from the normal operating schedule in order to conduct bridge maintenance and repair work. The Metro-North SAGA Railroad Bridge across the Saugatuck River, mile 1.1, at Saugatuck, Connecticut has a vertical clearance of 13 feet at mean high water in the closed position. The existing bridge operating regulations are listed at 33 CFR 117.221(b).

Under this temporary deviation, from 8 a.m. on Monday, September 17, 2018, to 8 a.m. on Monday, October 29, 2018, the Metro-North SAGA Bridge may operate as follows: From 8 a.m. Monday to 3 p.m. Friday, the draw may remain closed to marine navigation. From 3 p.m. Friday to 8 a.m. Monday, the draw shall open with 24 hours advance notice.

The waterway is transited by seasonal recreational vessels of various sizes. Vessels that can pass under the bridge in the closed position may do so at any time. The bridge will not be able to open for emergencies. The Department of Transportation has coordinated the closure with the harbormaster and has posted notice of the closure on the Connecticut Department of Transportation Construction News website. The Coast Guard will also inform the users of the waterway through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessel operators can arrange their transits to minimize any impact caused by this temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation

from the operating regulations is authorized under 33 CFR 117.35.

Dated: August 23, 2018.

C.J. Bisignano,

Supervisory Bridge Management Specialist, First Coast Guard District.

[FR Doc. 2018–18650 Filed 8–28–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2018–0757]

Safety Zone; San Francisco Giants Fireworks Display, San Francisco Bay, San Francisco, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the safety zone for the San Francisco Giants Fireworks Display in the Captain of the Port, San Francisco area of responsibility during the dates and times noted below. This action is necessary to protect life and property of the maritime public from the hazards associated with the fireworks display. During the enforcement period, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone, unless authorized by the Patrol Commander (PATCOM).

DATES: The regulations in 33 CFR 165.1191, Table 1, Item number 1, will be enforced from 11 a.m. on August 31, 2018 to 10:45 p.m. on August 31, 2018, or as announced via Broadcast Notice to Mariners.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Lieutenant Emily K. Rowan, U.S. Coast Guard Sector San Francisco; telephone (415) 399–7443 or email at *D11-SMB-SectorSF-WaterwaySafety@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce a 100 foot safety zone around the fireworks barge during the loading, transit, and arrival of the fireworks barge from the loading location to the display location and until the start of the fireworks display. From 11 a.m. until 5 p.m. on August 31, 2018, the fireworks barge will be loading pyrotechnics from Pier 50 in San Francisco, CA. The fireworks barge will remain at the loading location until its transit to the display location. From 8:30 p.m. to 9 p.m. on August 31, 2018 the loaded fireworks barge will transit from Pier 50 to the launch site near Pier 48 in approximate position 37°46′36″ N, 122°22′56″ W (NAD 83) where it will remain until the conclusion of the fireworks display. Upon the commencement of the 15 minute fireworks display, scheduled to begin at the conclusion of the baseball game, at approximately 10:00 p.m. on August 31, 2018, the safety zone will increase in size and encompass the navigable waters around and under the fireworks barge within a radius of 700 feet near Pier 48 in approximate position 37°46′36″ N, 122°22′56″ W (NAD 83) for the San Francisco Giants Fireworks in 33 CFR 165.1191, Table 1, Item number 1. This safety zone will be in effect from 11 a.m. on August 31, 2018 until 10:45 p.m. on August 31, 2018, or as announced via Broadcast Notice to Mariners.

Under the provisions of 33 CFR 165.1191, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone during all applicable effective dates and times, unless authorized to do so by the PATCOM. Additionally, each person who receives notice of a lawful order or direction issued by an official patrol vessel shall obey the order or direction. The PATCOM is empowered to forbid entry into and control the regulated area. The PATCOM shall be designated by the Commander, Coast Guard Sector San Francisco. The PATCOM may, upon request, allow the transit of commercial vessels through regulated areas when it is safe to do so.

This notice is issued under authority of 33 CFR 165.1191 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with extensive advance notification of the safety zone and its enforcement period via the Local Notice to Mariners.

If the Captain of the Port determines that the regulated area need not be enforced for the full duration stated in this notice, a Broadcast Notice to Mariners may be used to grant general permission to enter the regulated area.

Dated: August 23, 2018.

R.W. Deakin,

Lieutenant Commander, U.S. Coast Guard Chief, Waterways Management Division.

[FR Doc. 2018–18712 Filed 8–28–18; 8:45 am]

BILLING CODE 9110–04–P

POSTAL SERVICE

39 CFR Part 111

Overweight Items

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service is amending *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) to implement a process to remove overweight items from the postal network.

DATES: *Effective Date:* August 29, 2018.

FOR FURTHER INFORMATION CONTACT: Lizbeth Dobbins at (202) 268–3789 or Garry Rodriguez at (202) 268–7261.

SUPPLEMENTARY INFORMATION: The Postal Service published a notice of proposed rulemaking on April 20, 2018, (83 FR 17518–17519) to amend the DMM to add a process, which included a fee, for removing overweight items that are found in the postal network. Items that exceed the 70 pound weight limit are nonmailable and are not provided service.

The Postal Service received 2 formal responses to the proposed rule, one of which included multiple comments.

Both responses were in agreement with enforcing the 70 pound weight restriction. However, the second responder had several comments, as follows:

Comment: The responder felt it was unclear whether the fee would be imposed on the appropriate party, specifically in regards to returns.

Response: The Postal Service is deferring implementation of the fee at this time. When the fee is implemented, the Postal Service expects that, in most instances, including returns, the fee will be requested of the sender. However, certain circumstances (*e.g.,* when the sender is unknown) may require the fee to be requested from the receiver. Customers (sender, receiver) have the responsibility to communicate with each other to determine who is liable for the fee payment.

Comment: The second comment questioned the application of the fee and provided a hypothetical where the error was a result of an inaccurate Post Office scale.

Response: Post Office scales are calibrated daily. Customers may request a ''sight'' verification at the facility where the item was secured.

Comment: The third comment questioned the $100 fee and whether it could be construed as a price requiring additional approval.

Response: The fee determination will be made at a later date.

At this time, the Postal Service is implementing the process for removing items over the 70 pound maximum weight limit for Priority Mail Express®, Priority Mail®, USPS Retail Ground®, Media Mail®, Library Mail, Parcel Select®, and Parcel Return Service. Hazardous materials exceeding the applicable maximum weight limits discovered in the postal network may be subject to a civil penalty under 39 U.S.C. 3018.

Once the overweight item is identified, it will be secured and either the sender or receiver will be contacted to pick up the item within 14 calendar days. An overweight item not picked up within the 14 calendar day timeframe will be considered abandoned and disposed of at the Postal Service's discretion. Any amounts paid as purported postage and any fees would not be refundable.

The Postal Service is still determining the appropriate fee. However, because the safety of our employees is paramount, the Postal Service is moving forward immediately with implementing the process for intercepting and holding overweight items for pickup by mailers, without assessing a fee. The Postal Service will publish details regarding the fee in another **Federal Register** notice, once a final determination on the fee has been made.

This revision will ensure the safety of our employees while providing a superb customer experience from sender to receiver.

The Postal Service adopts the following changes to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), incorporated by reference in the *Code of Federal Regulations.* See 39 CFR 111.1. We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes.

Accordingly, 39 CFR part 111 is amended as follows:

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Incorporation by reference, Postal Service.

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM) as follows:

Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)

* * * * *

600 Basic Standards for All Mailing Services

601 Mailability

1.0 General Standards

* * * * *

[Renumber 1.2 and 1.3 as 1.3 and 1.4 and add new 1.2 to read as follows:]

1.2 Overweight Items

The maximum Postal Service mailpiece weight limit is 70 pounds, lower weight limits may apply. Any Priority Mail Express, Priority Mail, USPS Retail Ground, Media Mail, Library Mail, Parcel Select, and Parcel Return Service item exceeding the 70 pound Postal Service maximum weight limit is nonmailable and if found in the postal network will be secured at the facility identifying the ineligible item for pick-up by the mailer or addressee.

* * * * *

604 Postage Payment Methods and Refunds

* * * * *

9.0 Exchanges and Refunds

* * * * *

9.2 Postage and Fee Refunds

* * * * *

9.2.4 Postage and Fee Refunds Not Available

Refunds are not made for the following:

* * * * *

[Revise the text of 9.2.4 by adding a new item i to read as follows:]

i. For any amounts paid as purported postage and any fees on overweight items that are nonmailable under 601.1.2.

* * * * *

Brittany M. Johnson,

Attorney, Federal Compliance.

[FR Doc. 2018–18481 Filed 8–28–18; 8:45 am]

BILLING CODE 7710–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 10

[PS Docket Nos. 15–91 and 15–94, FCC 18–4]

Election Whether To Participate in the Wireless Emergency Alert System

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, the information collection associated with the Commission's a Wireless Emergency Alert Second Report and Order and Second Order on Reconsideration (*WEA Second R&O*). The *WEA Second R&O* defines ''in whole'' or ''in part'' Wireless Emergency Alert (WEA) participation; specifies the difference between these elections; and requires Commercial Mobile Service (CMS) Providers to update their election status and provide enhanced disclosure to subscribers at the point of sale. This document is consistent with the *WEA Second R&O,* which states that the Commission would publish a document in the **Federal Register** announcing the effective date of those rules.

DATES: The amendment to 47 CFR 10.240*,* published at 83 FR 8619 on February 28, 2018, is effective December 27, 2018.

FOR FURTHER INFORMATION CONTACT: Linda Pintro, Attorney-Advisor, Policy and Licensing Division, Public Safety and Homeland Security Bureau at 202–418–7490 or *Linda.Pintro@fcc.gov.*

SUPPLEMENTARY INFORMATION: This document announces that, on August 1, 2018, OMB approved, the information collection requirements relating to CMS Provider election of whether to participate in WEA, and the enhanced disclosure rules contained in the Commission's *WEA Second R&O,* PS Docket Nos. 15–91 and 15–94, FCC 18–4. The OMB Control Number is 3060–1113. The Commission publishes this document as an announcement of the effective date of the rules. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Nicole Ongele, Federal Communications Commission, Room 1–A620, 445 12th Street SW, Washington, DC 20554. Please include the OMB Control Number, 3060–1113, in your communication. The Commission will

also accept your comments *via* email at *PRA@fcc.gov.*

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).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received final OMB approval on August 1, 2018, for the information collection requirements contained in the modifications to the Commission's rules in 47 CFR 10.240.

Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number is 3060–1113.

The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

OMB Control Number: 3060–1113.

OMB Approval Date: August 1, 2018.

OMB Expiration Date: August 31, 2021.

Title: Election Whether to Participate in the Wireless Emergency Alert System.

Form Number: N/A.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 1,253 respondents; 5,012 responses.

Estimated Time per Response: 0.5–12 hours.

Frequency of Response: On occasion reporting requirement recordkeeping and third-party disclosure requirements.

Obligation to Respond: Mandatory and voluntary. The statutory authority for this information collection is contained in 47 U.S.C. 151, 154(i), 154(j), 154(o), 218, 219, 230, 256, 302(a), 303(f), 303(g), 303(r), 403, 621(b)(3), and 621(d).

Total Annual Burden: 28,820 hours.

Total Annual Cost: No Cost.

Nature and Extent of Confidentiality: An assurance of confidentiality is not offered because this information collection does not involve confidential information.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: The Warning, Alert and Response Network Act, Title VI of the Security and Accountability for Every Port Act of 2006 (120 Stat. 1884, section 602(a), codified at 47 U.S.C. 1201, *et seq.,* 1202(a)) (WARN Act) gives the Commission authority to adopt relevant technical standards, protocols, procedures and other technical requirements governing Wireless Emergency Alert. The WARN Act also gives the Commission authority to adopt procedures by which CMS Providers disclose their intent to participate in WEA. The Commission created WEA in response to the WARN Act, and to satisfy the Commission's mandate to promote the safety of life and property using wire and radio communication. These information collections involve the WEA system, which allows CMS Providers to elect to transmit emergency alerts to the public. The information collection from CMS Providers include (1) disclosing the extent to which a CMS Provider participates in wireless alerts (''in whole'' or ''in part''); and (2) enhanced notification of the CMS provider's non-participation in WEA, to new subscribers at the point of sale. These disclosures will allow consumers to make more informed choices about their ability to receive WEA Alert Messages that are relevant to them.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2018–18704 Filed 8–28–18; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

Modification of Rules To Codify New Procedure for Non-Federal Public Safety Entities To License Federal Interoperability Channels

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the information collection associated with Order DA 18–282. This document is consistent with Order DA 18–282, which stated that the Commission would publish a document in the **Federal Register** announcing the effective date of the information collection associated with that order.

DATES: The addition of 47 CFR 90.25, published at 83 FR 19976, May 7, 2018, is effective August 29, 2018.

FOR FURTHER INFORMATION CONTACT: Brian Marenco, Policy and Licensing Division, Public Safety and Homeland Security Bureau, at (202) 418–0838, or email: *Brian.Marenco@fcc.gov.* For additional information concerning the Paperwork Reduction Act information collection requirements contact Nicole Ongele at (202) 418–2991 or via email at *Nicole.Ongele@fcc.gov.*

SUPPLEMENTARY INFORMATION: This document announces that, on August 13, 2018, OMB approved, for a period of three years, the information collection requirements relating to new § 90.25 adopted in Order, DA 18–282, published at 83 FR 19976, May 7, 2018. The OMB Control Number is 3060–1257. The Commission publishes this document as an announcement of the effective date of the rules. If you have any comments on the burden estimates listed below, or how the Commission can improve the collection and reduce any burdens caused thereby, please contact Nicole Ongele, Federal Communications Commission, Room 1–A620, 445 12th Street SW, Washington, DC 20554. Please include the OMB Control Number, 3060–1257, in your correspondence. The Commission will also accept your comments via email at *PRA@fcc.gov.*

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).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received final OMB approval on August 13, 2018, for the information collection requirement contained in new rule 47 CFR 90.25.

Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number is 3060–1257.

The foregoing notice is required by the Paperwork Reduction Act of 1995,

Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

OMB Control Number: 3060–1257.

OMB Approval Date: August 13, 2018.

OMB Expiration Date: August 31, 2021.

Title: New Procedure for Non-Federal Public Safety Entities to License Federal Government Interoperability Channels.

Form Number: N/A.

Respondents: Not-for-profit institutions; State, local, or tribal government.

Number of Respondents and Responses: 45,947 respondents; 45,947 responses.

Estimated Time per Response: 0.25 hours.

Frequency of Response: One-time reporting requirement.

Obligation to Respond: New Section 90.25 adopted in Order DA 18–282, requires any non-federal public safety entity seeking to license mobile and portable units on the Federal Interoperability Channels to obtain written concurrence from its Statewide Interoperability Coordinator (SWIC) or a state appointed official and include such written concurrence with its application for license. A non-federal public safety entity may communicate on designated Federal Interoperability Channels for joint federal/non-federal operations, provided it first obtains a license from the Commission authorizing use of the channels. Statutory authority for these collections are contained in 47 U.S.C. 151, 154, 301, 303, and 332 of the Communications Act of 1934.

Total Annual Burden: 11,487 hours.

Total Annual Cost: No cost.

Privacy Act: No impact(s).

Nature and Extent of Confidentiality: Applicants who include written concurrence from their SWIC or state appointed official with their application to license mobile and portable units on the Federal Interoperability Channels need not include any confidential information with their application. Nonetheless, there is a need for confidentiality with respect to all applications filed with the Commission through its Universal Licensing System (ULS). Although ULS stores all information pertaining to the individual license via an FCC Registration Number (FRN), confidential information is accessible only by persons or entities that hold the password for each account, and the Commission's licensing staff. Information on private land mobile radio licensees is maintained in the Commission's system of records, FCC/WTB–1, ''Wireless Services Licensing Records.'' The licensee records will be publicly available and routinely used in accordance with subsection (b) of the Privacy Act. TIN Numbers and material which is afforded confidential treatment pursuant to a request made under 47 CFR 0.459 will not be available for Public inspection. Any personally identifiable information (PII) that individual applicants provide is covered by a system of records, FCC/WTB–1, ''Wireless Services Licensing Records,'' and these and all other records may be disclosed pursuant to the Routine Uses as stated in this system of records notice.

Needs and Uses: The purpose of requiring a non-federal public safety entity to obtain written consent from its SWIC or state appointed official before communicating with federal government agencies on the Federal Interoperability Channels is to ensure that the non-federal public safety entity operates in accordance with the rules and procedures governing use of the federal interoperability channels and does not cause inadvertent interference during emergencies. Commission staff will use the written concurrence from the SWIC or state appointed official to determine if an applicant's proposed operation on the Federal Interoperability Channels conforms to the terms of an agreement signed by the SWIC or state appointed official with a federal user with a valid assignment from the National Telecommunications and Information Administration (NTIA) which has jurisdiction over the channels.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2018–18691 Filed 8–28–18; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 228

[Docket No. FRA–2012–0101]

RIN 2130–AC41

Hours of Service Recordkeeping; Automated Recordkeeping

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This rule is part of FRA's broader initiative to reduce the paperwork burden of its regulations while still supporting compliance with the Federal hours of service laws and regulations. Current regulations require employees covered by those laws or regulations (covered service employees) to create and retain hours of service records by hand (a paper system) or ''certify'' the record using a compliant computerized system (an electronic system) with program logic. Cognizant of the burden placed on small operations, FRA provides a simplified method of computerized recordkeeping (an automated system)—in which employees apply their electronic signatures to automated records stored in a railroad computer system without the complexity and functionality of an electronic system—for eligible smaller railroads (and contractors and subcontractors providing covered service employees to such railroads). This rule does not require the use of automated recordkeeping, but, when implemented by the small operations for which it is tailored, it will decrease the burden hours spent on hours of service recordkeeping.

DATES: This final rule is effective August 29, 2018 in accordance with 5 U.S.C. 553(d)(1).

ADDRESSES: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT: Patrick J. Hogan, Transportation Specialist, Office of Railroad Safety, Federal Railroad Administration, 1200 New Jersey Avenue SE, W33–448, Washington, DC 20590; telephone: 202–493–0277; email: *Patrick.Hogan@dot.gov;* Kyle Fields, Trial Attorney, Office of Chief Counsel, Federal Railroad Administration, 1200 New Jersey Avenue SE., W31–232, Washington, DC 20590; telephone 202–493–6168; email: *Kyle.Fields@dot.gov;* or Emily T. Prince, Trial Attorney, Office of Chief Counsel, Federal Railroad Administration, 1200 New Jersey Avenue SE, W31–216, Washington, DC 20590; telephone 202–493–6146; email: *Emily.Prince@dot.gov.*

SUPPLEMENTARY INFORMATION:

Commonly Used Abbreviations

CFR Code of Federal Regulations
FRA Federal Railroad Administration
HS Hours of service

Table of Contents for Supplementary Information

I. Executive Summary

In 2009, FRA finalized amendments to the HS recordkeeping regulations at 49 CFR part 228 (part 228) to authorize electronic recordkeeping and reporting as a means of compliance with the Federal HS laws. In addition to certification requirements, see 49 CFR 228.9(b), these amendments added new subpart D to part 228, which established comprehensive requirements for electronic recordkeeping systems. Some smaller railroads informed FRA that the requirements of part 228, subpart D make electronic recordkeeping systems infeasible for their operations, which are less complex and variable than larger railroads' operations. Some small railroads already use an automated system for covered service employees to enter required HS data, which the employees then print and sign as a paper HS record. This rule allows a railroad with less than 400,000 employee-hours annually (an ''eligible smaller railroad''), and contractors and subcontractors that provide covered service employees to that railroad, to have employees electronically sign the automated records of their hours of duty and to store the records in the railroad's computer system. Thus, this rule eliminates the requirement to print and sign the record.

This rule amends part 228, subpart D by defining an ''automated recordkeeping system'' for eligible smaller railroads under new § 228.201(b) and outlining the requirements of such a system under new § 228.206, while retaining the definition of an ''electronic recordkeeping system'' as § 228.201(a) and the existing requirements under §§ 228.203–228.205. The rule also provides general requirements for automated records, such as electronic signatures, retention periods, and FRA access, under new § 228.9(c), and it modifies training requirements under § 228.207.

This rule allows an eligible smaller railroad to adopt an automated recordkeeping system without conforming to all the requirements for an electronic recordkeeping system. For example, new § 228.206 does not require an automated recordkeeping system to include some of the program components and other features that are not appropriate or necessary for the operations of eligible smaller railroads, although those features are important for an electronic recordkeeping system in light of the more complex operations of larger railroads. New § 228.206 includes requirements for FRA and participating State inspector access to and ability to search an automated recordkeeping system to effectively monitor compliance with the HS laws and regulations, similar to the search capabilities and access requirements for electronic recordkeeping systems.

This rule significantly reduces costs and paperwork burdens for eligible smaller railroads because automated records require less time to complete than manual records and the records may be stored digitally, relieving eligible smaller railroads of the burden of storing and maintaining paper records. The costs of implementing an automated recordkeeping system are projected as substantially less than an electronic recordkeeping system and are relatively small compared to the benefits gained by eliminating a paper recordkeeping system. Adopting an automated recordkeeping system is purely voluntary, but FRA expects many eligible smaller railroads currently using manual records to begin creating and maintaining HS records using an automated system, with a projected reduction of over 194,000 burden hours. FRA's economic analysis projects an estimated $87.6 million in net savings over a 10-year period as a result of this rule, and the present value of this savings is $55.1 million (discounted at 7 percent). The final rule is expected to have no negative impact on safety, as it simply provides a voluntary option for eligible smaller railroads and their contractors and subcontractors to use an alternative means of compliance with recordkeeping obligations.

II. Background and History

Federal laws governing railroad employees' hours of service date back to 1907 [1] and are presently codified at 49 U.S.C. 21101–21109,[2] 21303, and 21304.[3] FRA, under 49 U.S.C. 103(g), 49 CFR 1.89, and internal delegations, has long administered the statutory HS requirements and the agency's HS recordkeeping and reporting regulations (49 CFR part 228, subpart B), which promote compliance with the HS laws. Currently, the HS statutory requirements cover three groups of employees: train employees, signal employees, and dispatching service employees, as those terms are defined at Sec. 21101. The HS recordkeeping and reporting regulations at 49 CFR 228.5 include the statutory definitions of these terms and FRA interpretations discuss them. See FRA's ''Requirements of the Hours of Service Act; Statement of Agency Policy and Interpretation'' at 49 CFR part 228, appendix A, most of which was issued in the 1970s, and subsequent FRA interpretations of the HS laws published in the **Federal Register**.

Congress has amended the HS statutory requirements several times over the years, most recently in the Rail Safety Improvement Act of 2008 (RSIA).[4] The RSIA substantially amended the requirements of Secs. 21103 and 21104, applicable to a ''train employee'' [5] and a ''signal employee,'' [6] respectively, and added new provisions at Secs. 21102(c) and 21109 that together made a train employee providing rail passenger transportation subject to HS regulations, not Sec. 21103, if the Secretary timely issued regulations. Subsequently, FRA, as the Secretary's delegate, timely issued those regulations, codified at 49 CFR part 228, subpart F (Passenger Train Employee HS Regulations), which became effective October 15, 2011.

Additionally, section 108(f)(1) of the RSIA required the Secretary to prescribe a regulation revising the requirements for recordkeeping and reporting for hours of service of railroad employees, specifically to authorize electronic record keeping and reporting of excess

[1] See the Hours of Service Act (Pub. L. 59–274, 34 Stat. 1415 (1907)). Effective July 5, 1994, Public Law 103–272, 108 Stat. 745 (1994), repealed the Hours of Service Act as amended, then codified at 45 U.S.C. 61–64b, and revised and reenacted its provisions, without substantive change, as positive law at 49 U.S.C. 21101–21108, 21303, and 21304. The Hours of Service Act was administered by the Interstate Commerce Commission until these duties were transferred to FRA in 1966.

[2] These sections may also be cited as 49 U.S.C. Chapter 211. Hereinafter, references to a ''Sec.'' are to a section of title 49 of the U.S. Code unless otherwise specified.

[3] For a table comparing and contrasting the current Federal HS requirements with respect to freight train employees, passenger train employees, signal employees, and dispatching service employees, please see Appendix A to the Second Interim Interpretations. 78 FR 58830, 58850–58854, Sept. 24, 2013.

[4] Public Law 110–432, Div. A, 122 Stat. 4848.

[5] *See* Sec. 21101(5).

[6] *See* Sec. 21101(4). The RSIA also amended the definition of ''signal employee'' effective October 16, 2008. Before the RSIA, the term meant ''an individual *employed by a railroad carrier* who is engaged in installing, repairing, or maintaining signal systems.'' Emphasis added.

service and to require training of affected employees and supervisors, including training of employees in the entry of hours of service data. FRA, as the Secretary's delegate, also issued those regulations, codified at 49 CFR part 228, including subpart D (Electronic Recordkeeping), which became effective July 16, 2009. 74 FR 25330, May 27, 2009 (2009 Recordkeeping Amendments).[7]

In general, the 2009 Recordkeeping Amendments required that either employees recording their own time, or the reporting crewmember of a train crew or signal gang who was recording time, certify their electronic HS records, instead of signing them by hand, and that the recordkeeping system electronically stamp the records with the name of the certifying employee and the date and time of certification. *See* 49 CFR 228.9(b). These amendments also established comprehensive requirements for electronic recordkeeping systems. A brief summary of the most significant requirements follows.

- First, electronic recordkeeping systems must generate records that provide sufficient data fields for an employee to report a wide variety and number of activities that could arise during a duty tour. *See* 49 CFR 228.201.
- Second, the systems must have security features to control access to HS records and to identify any individual who entered information on a record. *See* 49 CFR 228.203(a)(1)(i), (a)(2)–(a)(7), and (b).
- Third, systems must include program logic that identifies how periods of time spent in any activity that is entered on a record are treated under the HS laws (and the substantive HS regulations for passenger train employees).
- Fourth, program logic must allow the systems to calculate total time on duty from the data the employee entered, flag employee-input errors so the employee can correct them before certifying the record, and require the employee to enter an explanation when the data entered shows a violation of the HS laws or regulations. *See* 49 CFR 228.203(c).
- Fifth, electronic recordkeeping systems must provide a method known as a ''quick tie-up'' for employees to enter limited HS information when they have met or exceeded the maximum hours allowed for the duty tour, and railroads must have procedures for employees to do a quick tie-up by telephone or facsimile (fax) if computer access is not available. *See* 49 CFR 228.5 and 228.203(a)(1)(ii).
- Finally, an electronic recordkeeping system must provide search capability so records may be searched by date or date range and by employee name or identification number, train or job assignment, origin or release location, territory, and by records showing excess service. The results of any such search must yield all records matching specified criteria. *See* 49 CFR 228.203(d).

III. Scope of the Final Rule

The final rule applies only to eligible smaller railroads[8], as well as contractors and subcontractors to such eligible smaller railroads. FRA is aware that some railroads have been using an automated system in which covered service employees access a blank HS record on a railroad computer, enter required data on the form, and then print and sign the record. The printed record is still considered a manual or paper record, with the associated burden of storage placed on the railroad. FRA expects many eligible smaller railroads will choose to comply with this rule using existing equipment and software already in use. For example, many eligible smaller railroads will find their existing equipment and software can generate forms that will allow employees to enter the information relevant to their duty tours as required by § 228.11 and save those records in a directory structure that would allow either the railroad or FRA to retrieve them using the search criteria provided in this rule.

Contractors and subcontractors to eligible smaller railroads are also eligible to use automated recordkeeping systems for their employees working on eligible smaller railroads, but not for their employees working on ineligible railroads. For instance, a contractor or subcontractor that performs covered service for both eligible smaller railroads and Class I railroads is not eligible to use an automated recordkeeping system for the hours of service records of its employees working for Class I railroads. If a contractor or subcontractor small enough to be eligible to use an automated recordkeeping system under this rule performs service for eligible and ineligible railroads and seeks to use an automated recordkeeping system, such a contractor or subcontractor may pursue relief through the waiver process, under 49 CFR 211.41.

It is appropriate to allow the eligible smaller railroads to use an automated recordkeeping system that lacks the programming and analysis capabilities required of an electronic recordkeeping system because of the less complex and less varied nature of the operations of eligible smaller railroads. For example, this rule does not require an automated system to calculate and fill in total time on duty based on the information an employee enters because that would require costly programming to enable the system to identify how various periods of time are treated. Instead, an employee will enter that information just as if the automated record were a paper record. Similarly, the rule does not require an automated system to include costly programming that would prompt the employee to enter an explanation of a duty tour over 12 hours or that would flag possible input errors or missing data (for example, showing an on-duty location that differs from the released location of the previous duty tour).

Approximately 746 railroads, 18 commuter railroads, and their contractors and subcontractors, are eligible to use automated recordkeeping systems pursuant to this rule. FRA declines to extend this rule to railroads with 400,000 or more employee-hours annually because the number of employees, volume of HS records, and complexity of operations associated with larger railroads requires a more sophisticated electronic recordkeeping system that complies with part 228, subpart D if those operations want to use an alternative to manual records.[9] A

[7] FRA issued its first HS recordkeeping regulation, codified at 49 CFR part 228, subparts A and B, in 1972. *See* 37 FR 12234, Jun. 21, 1972. Because the regulation did not contemplate electronic recordkeeping, it required HS records be signed manually by the employee whose time was being recorded. Therefore, prior to the effective date of the 2009 Recordkeeping Amendments, railroads that wished to create and maintain their required HS records electronically rather than manually needed FRA's waiver of the requirement for a handwritten signature. *See* FRA procedural regulations at 49 CFR part 211. At the time the 2009 recordkeeping amendments went into effect, several Class I railroads were creating and maintaining their required HS records using an electronic recordkeeping system approved by FRA pursuant to a waiver. See the preamble of the 2009 Recordkeeping Amendments for further discussion of the history of electronic recordkeeping and the development of waiver-approved electronic recordkeeping systems. *See* 74 FR 25330, 25330–25334.

[8] Railroads that: (1) Reported less than 400,000 employee hours to FRA during the preceding three consecutive calendar years under 49 CFR 225.21(d) on Form FRA 6180.55, Annual Railroad Reports of Manhours by State; or (2) operating less than three consecutive calendar years that reported less than 400,000 employee hours to FRA during the current calendar year under 49 CFR 225.21(d) on Form FRA 6180.55, Annual Railroad Reports of Manhours by State.

[9] FRA also declines to adopt a *per se* rule allowing Class III railroads to use automated recordkeeping because the definition of ''Class III

larger and more complex operation benefits from an electronic recordkeeping system's program logic that helps to ensure accurate recordkeeping, and search capabilities that help to better identify relevant records for the railroad's own review and in response to FRA requests.

Among commuter railroads, for example, Metro-North Commuter Railroad is currently using an electronic recordkeeping system, and New Jersey Transit Railroad is developing an electronic recordkeeping system. FRA understands that these railroads are willing to share some information with other commuter railroads that are ineligible for automated recordkeeping systems to help them develop electronic recordkeeping systems compliant with part 228, subpart D. By developing these partnerships, larger commuter railroads will have a cost-effective opportunity to eliminate paper records and adopt electronic recordkeeping systems even if they do not qualify for automated recordkeeping under this rule. For these reasons, FRA adopts this rule applicable only to eligible smaller railroads.

IV. Discussion of Comments

FRA received two public comments on the automated recordkeeping NPRM. The American Short Line and Regional Railroad Association filed a short comment October 23, 2015, indicating the NPRM accurately assessed the ability of small railroads to capture HS data and expressing eagerness to see a final rule in effect. FRA also received an anonymous comment October 22, 2015, indicating only that the NPRM was, ''Good.'' FRA received no public comments conveying a need to change the scope or substance of the proposed rule.

V. Section-by-Section Analysis

Subpart A—General

Section 228.5 Definitions

FRA adds definitions of ''automated recordkeeping system''; ''electronic recordkeeping system''; ''electronic signature''; and ''eligible smaller railroad.''

The definitions of ''automated recordkeeping system'' and ''electronic recordkeeping system'' distinguish the automated systems subject to this rulemaking, which are required to conform to the requirements of new §§ 228.201(b) and 228.206, from the electronic recordkeeping systems that must meet the pre-existing requirements of §§ 228.201(a) and 228.203–228.205.

The definition of ''electronic signature'' is consistent with the Electronic Signatures in Global and National Commerce Act.[10] It allows railroads the choice of using two different types of electronic signatures for their employees to sign their HS records: Either (1) a unique digital signature, created based on the employee's identification number and password, or other means used to uniquely identify the employee in the automated recordkeeping system; or (2) a unique digitized version of the employee's handwritten signature that would be applied to the HS record.[11] The definition also provides the electronic signature must be created as provided in § 228.19(g) (existing regulatory requirements for creating an electronic signature for railroads' use on their reports of excess service) or § 228.206(a) (new requirements for creating electronic signatures for use on employees' HS records in an automated recordkeeping system).

This rule defines an ''eligible smaller railroad'', in general, as a railroad with less than 400,000 employee hours annually, which is eligible to use an automated recordkeeping system under this rule. More specifically, an eligible smaller railroad is defined as a railroad that has reported to FRA it had less than 400,000 employee hours during the preceding three consecutive calendar years on Form FRA 6180.55—Annual Railroad Reports of Manhours by State, as required by 49 CFR 225.21(d). As an exception to the general rule, railroads that have not been operating for three prior consecutive calendar years and expect to have less than 400,000 employee hours annually during the current year may use an automated recordkeeping system. This final rule combines the substantive content of the proposed definitions of ''eligible smaller railroad'' and ''railroad that has less than 400,000 employee hours annually'' into the final definition of ''eligible smaller railroad.''

Section 228.9 Records; General

New § 228.9(c) establishes requirements for automated records that parallel the requirements of paragraph (a) for manual records and paragraph (b) for electronic records. Paragraph (c) requires that automated records be electronically signed and stamped with the certifying employee's electronic signature that meets the requirements of § 228.206(a) and the date and time that the employee electronically signed the record. As in paragraphs (a) and (b), paragraph (c) contains requirements for retaining and accessing the records. Unlike paragraph (b) applicable to electronic records, paragraph (c) does not require using an employee identification (ID) and password to access automated records.[12] While some eligible smaller railroads might choose to provide an ID and password for the purpose of accessing an automated system, FRA concludes mandating an ID and password would be more complex than necessary for smaller operations, which may choose, for example, to have a railroad official directly provide access.[13] Finally, paragraph (c) requires automated records be capable of being reproduced on printers available at the location where records are accessed, meaning railroads must have printers available at any location where they provide access to records. This requirement also applies to electronic recordkeeping systems under § 228.9(b).

Section 228.11 Hours of Duty Records

Section 228.11(a) requires each railroad, or a contractor or a subcontractor that provides covered service employees to a railroad, to ''keep a record, either manually or electronically, concerning the hours of duty of each employee.'' Because HS records created and maintained using an automated recordkeeping system will also be required to comply with the requirements of § 228.11 (*see* section-by-section analysis of § 228.201(b) below), this rule removes the words ''either manually or electronically'' from the requirement.

railroad'' includes all terminal and switching operations, regardless of operating revenue, some of which have extensive operations more appropriately served by an electronic recordkeeping system. *See* 49 CFR 1201.1–1(d). Accordingly, FRA chose to define the rule's applicability based on employee hours.

[10] Public Law 106–229, 114 Stat. 472 (2000); *see* 15 U.S.C. 7006.

[11] If a railroad creates an electronic signature that is a unique digital signature for each of its employees, the employee's HS record will be signed with the employee's printed name or other identifying information, when the employee signs the record using his or her electronic signature. If the railroad instead creates a digitized version of the employee's handwritten signature, the record will be signed with the employee's handwritten signature when the employee signs the record using his or her electronic signature.

[12] Employee ID and passwords are necessary for employees to certify their hours of service records, but are not required as a mechanism for providing access to the automated recordkeeping system.

[13] It is important to note access must be available as soon as possible and no later than 24 hours after a request, as required by § 228.206(e)(2), as discussed further below. In addition, railroads and managers risk civil and criminal liability if they control access to an automated recordkeeping system in a manner that prevents employees from accurately reporting their hours of service.

Section 228.201 Electronic Recordkeeping System and Automated Recordkeeping System; General

FRA retains the pre-existing requirements of this section for electronic recordkeeping systems as paragraph (a) and adopts new paragraph (b) with similar but simplified requirements for automated recordkeeping systems, in part by cross-referencing those requirements of paragraph (a) also applicable to automated recordkeeping systems. The rule makes minor non-substantive changes to paragraphs (a)(3), (a)(4), and (a)(5) to correct typographical errors, specifically by deleting the ''and'' after paragraph (a)(3), replacing the periods at the end of paragraphs (a)(4) and (a)(5) with semicolons, and adding ''and'' after the semicolon at the end of paragraph (a)(5). New § 228.201(b)(1) requires an automated recordkeeping system to comply with new § 228.206. New § 228.201(b)(2) requires eligible smaller railroads using automated recordkeeping systems to comply with the requirements of paragraphs (a)(2) and (a)(4)–(a)(6), requirements also applicable to electronic records and recordkeeping systems. The main difference between the requirements of new § 228.201(b)(2) for automated records and recordkeeping systems and the corresponding existing requirements for electronic records and recordkeeping systems is that automated systems are not required to have monitoring indicators in the system to help the railroad monitor the accuracy of the records. Eligible smaller railroads, however, remain responsible for the accuracy of their required HS records, regardless of whether the record is manual, automated, or electronic.

Finally, under new § 228.201(c), if a railroad, or a contractor or subcontractor to a railroad with an automated recordkeeping system, ceases to qualify as an ''eligible smaller railroad'' based on the new definition in § 228.5, that railroad, or contractor or subcontractor to a railroad, may not use an automated recordkeeping system unless FRA grants a waiver under 49 CFR 211.41. As described above, FRA believes larger railroads are better served by the use of an electronic recordkeeping system. In most cases, a railroad with such growth for three consecutive calendar years will have had sufficient time and funding to transition to an electronic recordkeeping system.

Section 228.206 Requirements for Automated Records and Recordkeeping Systems on Eligible Smaller Railroads

New § 228.206 establishes the requirements for an automated recordkeeping system, some of which are similar to the requirements for electronic recordkeeping systems found in §§ 228.203 and 228.205. As discussed in Section III above, however, § 228.206 is tailored to the nature and lesser complexity of the operations of eligible smaller railroads. Therefore, the rule does not require an automated system to include some of the program components and other features that apply to electronic recordkeeping systems. These elements are not appropriate or necessary for the operations of eligible smaller railroads; however, the rule requires other elements for the automated systems not used in an electronic recordkeeping system.

Paragraph (a) mandates an employee creating an automated record must sign the record and establishes the requirements for an electronic signature. These requirements largely track paragraph (g) of § 228.19, which explains the requirements for railroads to establish and use electronic signatures for filing reports of excess service. These requirements are unique to automated recordkeeping systems and do not apply to electronic recordkeeping systems.

Paragraph (b) provides standards for system security of automated recordkeeping systems. Eligible smaller railroads must control access to the automated recordkeeping system using a user name and password or comparable method. Paragraph (b)(1) restricts data entry to the employee, train crew, or signal gang whose time is being reported, although a railroad may pre-populate some of the known factual data on its employees' HS records. An employee's name or identification number, or the on-duty time for an employee who works a regular schedule, are examples of the kind of data that the automated system can pre-populate; however, the regulation requires that the employee may make changes to any pre-populated data at all times without requiring permission or authorization from any third party, such as, but not limited to, a railroad manager.

Paragraph (b)(2) requires no two individuals have the same electronic signature, and paragraph (b)(3) requires the system not permit the deletion or alteration of an electronically-signed automated record. Paragraphs (b)(4) and (b)(5) together require that any amendment to a record must (1) be stored digitally apart from the record it amends or attached as information without altering the record and (2) identify the person making the amendment. Finally, paragraphs (b)(6) and (b)(7) require the automated recordkeeping systems maintain records as submitted without corruption or loss of data and ensure supervisors and crew management officials can access, but not delete or alter, an automated record after an employee electronically signs the record. The proposed rule did not establish a specific interval for railroads to back-up the data contained in their automated recordkeeping system. FRA requested comments on the appropriate interval and method of data back-up, but did not receive any comments on this issue. To guarantee sufficient data redundancy to prevent substantial loss of HS records, paragraph (b)(6) now requires back-up of automated recordkeeping systems at least quarterly.

Paragraph (c) requires the automated recordkeeping system to identify each individual who enters data on a record and which data items each individual entered if more than one person entered data on a given record.

Paragraph (d) establishes the required search capabilities for an automated recordkeeping system. Though the rule provides specific data fields and other criteria the system must be able to use to search for and retrieve responsive records, the requirements are notably less complex than those for an electronic recordkeeping system.

Paragraph (e) establishes the requirements for access to automated recordkeeping systems. Eligible smaller railroads must grant FRA inspectors, and participating State inspectors, access to the system using railroad computer terminals as soon as possible, and no later than 24 hours after a request for access. The access must make visible each data field an employee completed, and data fields must be searchable as described in paragraph (d).

Section 228.207 Training

This rule revises the training requirements of part 228. Specifically, paragraph (b) of this section, which sets forth the components of initial training, will now require training on how to enter HS data into an automated system. The paragraph currently requires training of employees on the electronic recordkeeping system or the appropriate paper records used by the railroad, contractor, or subcontractor for whom the employees perform covered service. Paragraph (b) will now include a similar training requirement for eligible smaller

railroads that develop an automated recordkeeping system in compliance with this rule.

Similarly, this rule revises paragraph (c) of this section to specifically require eligible smaller railroads with automated systems to provide refresher training emphasizing any changes in HS substantive requirements, HS recordkeeping requirements, or a railroad's HS recordkeeping system since the employee was last provided training. FRA expects any railroad implementing an automated recordkeeping system to replace previously-used paper records would need to provide training on the use of that system to its employees, even if those employees had previously received training for paper records as required by this section.

VI. Regulatory Impact and Notices

A. Executive Orders 12866, 13563, and 13771 and DOT Regulatory Policies and Procedures

This final rule has been evaluated in accordance with existing policies and procedures under Executive Order 12866, Executive Order 13563, Executive Order 13771, and DOT policies and procedures. 44 FR 11034, Feb. 26, 1979; 76 FR 3821, Jan. 21, 2011; 82 FR 9339, Jan. 30, 2017. OMB designated this rule nonsignificant. FRA prepared and placed in the docket a Regulatory Evaluation addressing the economic impacts of this rule.

FRA will now allow eligible smaller railroads, and their contractors and subcontractors, to use automated recordkeeping systems, a simpler alternative to electronic recordkeeping systems that are infeasible for them, because their operations are less complex and variable than the operations of larger railroads. Both electronic and automated records require substantially less time to complete and cost less to store than manual records. Under this rule, eligible smaller railroads can take advantage of paper-saving technology to create and maintain hours of duty records as required by 49 CFR part 228, subpart B without complying with the more-stringent requirements for electronic recordkeeping systems under 49 CFR part 228, subpart D that may not be relevant to their operations. As part of its regulatory evaluation, FRA explained the benefits/cost savings of automated records and recordkeeping systems under this rule and provided a monetized value. The rule substantially reduces costs compared to current paper recordkeeping systems by allowing eligible smaller railroads to use automated recordkeeping systems. FRA believes the majority of eligible smaller railroads will take advantage of the opportunity for cost savings and incur a small burden to realize projected significant net cost savings. The final rule also follows the direction of Executive Order 13563, which emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

Finally, this final rule is considered an E.O. 13771 deregulatory action. Details on the estimated cost savings of this proposed rule can be found in the rule's economic analysis.

FRA estimates this regulation will result in a total estimated reduction of just over 194,000 burden hours annually. Based on railroads' annual 6180.55 reports to FRA for 2016, this rule will apply to a total of approximately 764 railroads with less than 400,000 employee-hours annually. These 764 railroads include the eligible employees of 746 probable small freight railroads and 18 small commuter railroads, as well as their contractors and subcontractors. FRA estimates 615 of these entities will adopt an automated recordkeeping system: 80 percent of the 746 small railroads and all 18 of the small commuter railroads.

The economic analysis [14] provides a quantitative evaluation of the costs, cost savings, and benefits of the rule. The cost savings equals the reduced time an employee spends entering hours of duty in an automated system compared to the time they currently spend to manually produce a paper record of hours on duty. FRA calculated a reduction of 8 minutes per record.

FRA estimated the net cost savings expected from this final rule. In particular, over a 10-year period, $87.6 million in net savings could accrue through the adoption of automated recordkeeping systems. The present value of this savings is $55.1 million (discounted at 7 percent). FRA concludes the eligible small railroads would benefit significantly from adoption of the final rule.

Railroads are already producing HS records manually on paper records to comply with 49 CFR 228.11, and adopting an automated recordkeeping system is voluntary. FRA expects a relatively small implementation investment cost for railroads electing to use the automated system to realize the significant benefits (cost burden reduction). Costs are primarily labor driven along with the potential purchase of hardware [15] and software. [16]FRA estimates that if each of these railroads were to expend $5,590 discounted at 7 percent over a 10-year period to set up and operate an automated recordkeeping system for HS records, the railroads would reduce their paperwork burden by $95,174 discounted at 7 percent over that same period.

Therefore, this final rule would have a positive effect on these railroads, saving each railroad approximately a net $89,584 in costs at discounted 7 percent over the 10-year analysis. The table below presents the estimated net cost savings associated with the final rule, over the 10-year analysis.

TABLE 1—10-YEAR ESTIMATED NET COST SAVINGS OF FINAL RULE

Costs to prepare and operate automated record keeping	$3,438,058
Cost Savings: Reduced Hours of recordkeeping	58,532,167
Net Cost Savings	55,094,109

Dollars are discounted at a present value rate of 7%.

B. Regulatory Flexibility Determination

Both the Regulatory Flexibility Act (RFA), Public Law 96–354, as amended, and codified as amended at 5 U.S.C. 601–612, and Executive Order 13272—Proper Consideration of Small Entities in Agency Rulemaking, 67 FR 53461, Aug. 16, 2002, require agency review of proposed and final rules to assess their

[14] The Regulatory Evaluation for Docket No. FRA–2012–101, Notice No. 2, is placed in the regulatory docket for this final rule.

[15] The equipment needed for an automated recordkeeping system includes, a PC and other computer accessories such as printers.

[16] Examples of the types of software that might be purchased are simple programmable accounting type spreadsheets, or electronic signature and encryption software.

impact on ''small entities'' for purposes of the RFA. An agency must prepare a regulatory flexibility analysis unless it determines and certifies a final rule is not expected to have a significant impact on a substantial number of small entities. Pursuant to the RFA, 5 U.S.C. 605(b), the Administrator of FRA certifies this final rule will not have a significant economic impact on a substantial number of small entities. Although this final rule could affect many small railroads, they may voluntarily adopt the requirements. Moreover, the effect on those railroads that do voluntarily adopt the requirements is primarily beneficial and not significant because it will reduce their labor burden for hours of service recordkeeping and reporting.

The term ''small entity'' is defined in 5 U.S.C. 601 (Section 601). Section 601(6) defines ''small entity'' as having the same meaning as ''the terms 'small business', 'small organization' and 'small governmental jurisdiction' defined in paragraphs (3), (4), and (5) of this section.'' In turn, Section 601(3) defines a ''small business'' as generally having the same meaning as ''small business concern'' under Section 3 of the Small Business Act, and includes any a small business concern that is independently owned and operated, and is not dominant in its field of operation. Next, Sec. 601(4) defines ''small organization'' as generally meaning any not-for-profit enterprises that is independently owned and operated, and not dominant in its field of operations. Additionally, Sec. 601(5) defines ''small governmental jurisdiction'' in general to include governments of cities, counties, towns, townships, villages, school districts, or special districts with populations less than 50,000.

The U.S. Small Business Administration (SBA) stipulates ''size standards'' for small entities. It provides that, in order to qualify for ''small entity'' status, a for-profit railroad business firm may have a maximum of 1,500 employees for ''Line-Haul Operating'' railroads and 500 employees for ''Short-Line Operating'' railroads. *See* ''Size Eligibility Provisions and Standards,'' 13 CFR part 121, subpart A.

Under exceptions in Section 601, Federal agencies may adopt their own size standards for small entities in consultation with SBA, and in conjunction with public comment. Under that authority, FRA published a ''Final Policy Statement Concerning Small Entities Subject to the Railroad Safety Laws'' (Policy) which formally establishes that small entities include among others, the following: (1) Railroads that Surface Transportation Board (STB) regulations classify as Class III and (2) commuter railroads ''that serve populations of 50,000 or less.'' [17] *See* 68 FR 24891, May 9, 2003, codified at appendix C to 49 CFR part 209. Currently, railroads eligible for small entity status under the Policy also must have $20 million or less in annual operating revenue, adjusted annually for inflation. The $20 million limit (adjusted annually for inflation) is based on the STB's threshold for a Class III railroad, which is adjusted by applying the railroad revenue deflator adjustment. For further information on the calculation of the specific dollar limit, *see* 49 CFR part 1201. FRA uses this definition of ''small entity'' for this final rule.

FRA amends its hours of service recordkeeping regulations to provide simplified recordkeeping requirements by allowing eligible smaller railroads, and their contractors and subcontractors, to utilize an automated system to create and maintain hours of duty records as required by 49 CFR 228.11. As stated above, FRA reports indicate there are 742 Class III railroads that are eligible to use the simplified automated recordkeeping system this final rule provides. However, if they are affected, it is voluntary because this final rule does not require any railroad to develop and use an automated recordkeeping system. As stated above, there are also 18 commuter railroads, each of which is run by a State, County, or Municipal Agency, eligible under this final rule to develop and use an automated recordkeeping system, but all serve populations of 50,000 or more and are not designated as small businesses.[18]

FRA estimates 80 percent of small railroads and all small commuter railroads to convert to automated recordkeeping. For the purposes of this analysis, the 615 railroads FRA estimates are affected by this final rule are assumed to be small railroads. However, as discussed above, the economic impact on these small railroads is not significant. This final rule does not affect any other small entities other than these small railroads. As stated above in Section VI.A., although FRA estimates each of these railroads will expend $5,590, this final rule will have a positive net economic effect on these railroads, saving each railroad approximately $89,584 in costs at discounted 7 percent over the 10-year period analyzed. Since this amount is relatively small and beneficial, FRA concludes this final rule does not have a significant impact on these railroads.

To determine the significance of the economic impact for this RFA, during the NPRM process, FRA invited comments from all interested parties concerning the potential economic impact of this rulemaking on small entities. However, FRA did not receive any comments related to small entities.

FRA expects the final rule will reduce the paperwork burden for smaller railroads. Therefore, this RFA concludes this final rule will not cause an economic impact on any small entities.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601(b), the FRA Administrator hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. FRA continues to invite comments from members of the public who foresee a significant impact.

C. Federalism

Executive Order 13132, ''Federalism'' (64 FR 43255, Aug. 10, 1999), requires FRA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' The executive order defines ''policies that have federalism implications'' to include regulations that 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.'' Under Executive Order 13132, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments or the agency consults with State and local government officials early in the process of developing the regulation. Where a

[17] ''In the Interim Policy Statement [62 FR 43024, Aug. 11, 1997], FRA defined 'small entity,' for the purpose of communication and enforcement policies, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* and the Equal Access for Justice Act 5 U.S.C. 501 *et seq.,* to include only railroads which are classified as Class III. FRA further clarified the definition to include, in addition to Class III railroads, hazardous materials shippers that meet the income level established for Class III railroads (those with annual operating revenues of $20 million per year or less, as set forth in 49 CFR 1201.1–1); railroad contractors that meet the income level established for Class III railroads; and those commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less.'' 68 FR 24892 (May 9, 2003). ''The Final Policy Statement issued today is substantially the same as the Interim Policy Statement.'' 68 FR 24894.

[18] Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), ''small governmental jurisdictions'' are governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than 50,000.

regulation has federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

FRA analyzed this final rule consistent with the principles and criteria contained in Executive Order 13132. FRA determined the final rule will not have substantial direct effects on States, on the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government. In addition, FRA determined this final rule will not impose substantial direct compliance costs on State and local governments. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

This final rule amends FRA's HS reporting and recordkeeping regulations to allow a railroad with less than 400,000 employee hours annually, and a contractor or subcontractor providing covered service employees to such a railroad, to create and maintain HS records for its covered service employees using an automated recordkeeping system. FRA is not aware of any State with regulations covering the subject of this final rule. However, FRA notes this rule could have preemptive effect under Section 20106 of the former Federal Railroad Safety Act of 1970, that Congress repealed, reenacted without substantive change, codified at 49 U.S.C. 20106, and later amended (Section 20106). Section 20106 provides that States may not adopt or continue in effect any law, regulation, or order related to railroad safety or security that covers the subject matter of a regulation prescribed or order issued by the Secretary of Transportation (with respect to railroad safety matters), unless the State law, regulation, or order (1) qualifies under the ''essentially local safety or security hazard'' exception to Section 20106, (2) is not incompatible with a law, regulation, or order of the U.S. Government, and (3) does not unreasonably burden interstate commerce.

In sum, FRA analyzed this final rule consistent with the principles and criteria contained in Executive Order 13132. As explained above, FRA determined this final rule has no federalism implications other than possible preemption of State laws under 49 U.S.C. 20106 and 21109 (providing regulatory authority for hours of service). Accordingly, FRA determined it is not required to prepare a federalism summary impact statement for this final rule.

D. International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards, and, where appropriate, that they be the basis for U.S. standards. This rulemaking is purely domestic in nature and is not expected to affect trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

E. Paperwork Reduction Act

The information collection requirements in this final rule are being submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq*. The sections that contain the new and current information collection requirements are duly designated, and the estimated time to fulfill each requirement is as follows:

CFR section–49 CFR	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
228.11—Hours of duty records	785 railroads/signal contractors & subcontactors.	27,511,875 records	2 min./5 min./8 min	2,733,439
228.17—Dispatchers record of train movements	150 dispatch offices	200,750 records	3 hours	602,250
228.19—Monthly reports of excess service	300 railroads	2,670 reports	2 hours	5,340
228.103—Construction of Employee Sleeping Quarters—Petitions to allow construction near work areas.	50 railroads	1 petition	16 hours	16
228.201(b)—Electronic recordkeeping system and Automated system—RR automated systems (Revised Requirement).	764 railroads	615 automated systems	24 hours	14,760
(c)—Waiver requests by railroads/contractors/subcontractors no longer eligible use an automated recordkeeping system to refrain from having to begin keeping manual or electronic records or refrain from retaining its automated records as required under section 228.9(c) (New Requirement).	615 railroads	2 waiver requests	8 hours	16
228.206—*New Requirements*—Requirements for automated records and for automated recordkeeping systems on eligible smaller railroads, and their contractors or subcontractors that provide covered service employees to such railroads.	100,500 employees	19,365 signed certifications.	5 minutes	1,614
Certification of employee's electronic signature	100,500 employees	75 signed certifications	5 minutes	6
—Additional certification/testimony provided by employee upon FRA request.	615 railroads	615 procedures	90 minutes	923
—Procedure for providing FRA/state inspector with system access upon request.				
228.207—*Revised Requirements*—Training in use of electronic or automated system—Initial training.	615 railroads	5,931 trained employees.	2 hours	11,862

CFR section–49 CFR	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
—Employee refresher training on relevant changes to hours of service laws, the recording or reporting requirements in Subparts B and D of this Part, or the electronic, automated, or manual recordkeeping system of the railroad/contractor.	785 railroads/contractors & subcontractors.	47,000 trained employees.	1 hour	47,000
49 U.S.C. 21102—The Federal Hours of Service Laws—Petitions for exemption from laws.	10 railroads	1 petition	10 hours	10
228.407—Analysis of work schedules—RR analysis of one cycle of work schedules of employees engaged in commuter or intercity passenger transportation.	168 railroads	2 analyses	20 hours	40
—RR Report to FRA Administrator of each work schedule that exceeds fatigue threshold.	168 railroads	1 report	2 hours	2
—RR Fatigue mitigation plan—submission and FRA approval.	168 railroads	1 plan	4 hours	4
—Work schedules, proposed mitigation plans/tools, determinations of operational necessity—found deficient by FRA and needing correction.	168 railroads	1 corrected document	2 hours	2
—Follow-up analyses submitted to FRA for approval.	168 railroads	5 analyses	4 hours	20
—Deficiencies found by FRA in revised work schedules and accompanying fatigue mitigation tools and determinations of operational necessity needing correction.	168 railroads	1 corrected document	2 hours	2
—Updated fatigue mitigation plans	168 railroads	8 plans	4 hours	32
—RR Consultation with directly affected employees on: (i) RR Work schedules at risk for fatigue level possibly compromising safety; and (ii) Railroad's selection of fatigue mitigation tools; and (iii) All RR Submissions required by this section seeking FRA approval.	168 railroads	5 consultations	2 hours	10
—Filed employee statements with FRA explaining any issues related to paragraph (f)(1) of this section where consensus was not reached.	RR Employee Organizations.	2 filed statements	2 hours	4
228.411—RR Training programs on fatigue and related topics (*e.g.*, rest, alertness, changes in rest cycles, etc.).	168 railroads	14 training programs	5 hours	70
—Refresher training for new employees	168 railroads	150 initially trained employees.	1 hour	150
—RR Every 3 Years refresher training for existing employees.	168 railroads	3,400 trained employees.	1 hour	3,400
—RR Record of employees trained in compliance with this section.	168 railroads	3,550 records	5 minutes	296
—Written declaration to FRA by tourist, scenic, historic, or excursion RR seeking exclusion from this section's requirements because its employees are assigned schedules wholly within the hours of 4 a.m. to 8 p.m. on the same calendar day that comply with the provisions of section 228.405.	140 railroads	2 written declarations	1 hour	2
Appendix D—Guidance on fatigue management plan—RR reviewed and updated fatigue management plans.	168 railroads	2 updated plans	10 hours	20

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), FRA solicits comments concerning: Whether these information collection requirements are necessary for the proper performance of the functions of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For information or a copy of the paperwork package submitted to OMB, contact Mr. Robert Brogan, Information Collection Clearance Officer, Office of Railroad Safety, at 202–493–6292, or Ms. Kim Toone, Information Collection Clearance Officer, Office of Railroad Administration, at 202–493–6132, or via email at the following addresses: *Robert.Brogan@dot.gov; Kim.Toone@dot.gov.*

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: FRA Desk Officer. Comments may also be sent via email to the Office of Management and Budget at the following address: *oira_submissions@omb.eop.gov.*

OMB is required to make a decision concerning the collection of information requirements contained in this final rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

FRA cannot impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of this final rule. The OMB control number assigned to the collection of information associated with the current rule is OMB No. 2130–0005.

F. Environmental Assessment

FRA evaluated this final rule consistent with its ''Procedures for Considering Environmental Impacts'' (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 et seq.), other environmental statutes, Executive Orders, and related regulatory requirements. FRA determined this final rule is not a major FRA action requiring the preparation of an environmental impact statement or environmental assessment because it is categorically excluded from detailed environmental review under section 4(c)(20) of FRA's Procedures.See 64 FR 28547, May 26, 1999. Section 4(c)(20) states certain classes of FRA actions have been determined to be categorically excluded from the requirements of FRA's Procedures as they do not individually or cumulatively have a significant effect on the human environment, including the promulgation of railroad safety rules and policy statements that do not result in significantly increased emissions of air or water pollutants or noise or increased traffic congestion in any mode of transportation.

FRA further concluded no extraordinary circumstances exist with respect to this final regulation that might trigger the need for a more detailed environmental review under sections 4(c) and (e) of FRA's Procedures. As a result, FRA finds that this final rule is not a major Federal action significantly affecting the quality of the human environment.

G. Unfunded Mandates Reform Act of 1995

Under section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act (2 U.S.C. 1532) further requires written statements from agencies before promulgating any general notice of proposed rulemaking that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year and before promulgating any final rule for which a general notice of proposed rulemaking was published. The written statement, if required, would detail the effect on State, local, and tribal governments and the private sector.

For the year 2015, FRA adjusted the monetary amount of $100,000,000 to $156,000,000 for inflation. This final rule would not result in the expenditure of more than $156,000,000 by the public sector in any one year, and thus preparation of such a statement is not required.

H. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' 66 FR 28355, May 22, 2001. Under the Executive Order, ''significant energy action'' means any action by an agency (normally published in the **Federal Register**) that promulgates, or is expected to lead to the promulgation of, a final rule or regulation (including a notice of inquiry, advance NPRM, and NPRM) that (1)(i) is a significant regulatory action under Executive Order 12866 or any successor order and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA evaluated this rule consistent with Executive Order 13211. FRA determined this rule will not have a significant adverse effect on the supply, distribution, or use of energy and, thus, is not a ''significant energy action'' under the Executive Order 13211.

List of Subjects in 49 CFR Part 228

Administrative practice and procedures, Buildings and facilities, Hazardous materials transportation, Noise control, Penalties, Railroad employees, Railroad safety, Reporting and recordkeeping requirements.

The Rule

For the reasons discussed in the preamble, FRA amends part 228 of chapter II, subtitle B of title 49, Code of Federal Regulations, as follows:

PART 228—PASSENGER TRAIN EMPLOYEE HOURS OF SERVICE; RECORDKEEPING AND REPORTING; SLEEPING QUARTERS

■ 1. The authority citation for part 228 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107, 21101–21109; Sec. 108, Div. A, Pub. L. 110–432, 122 Stat. 4860–4866, 4893–4894; 49 U.S.C. 21301, 21303, 21304, 21311; 28 U.S.C. 2461, note; 49 U.S.C. 103; and 49 CFR 1.89.

■ 2. The heading of part 228 is revised to read as set forth above.

■ 3. In § 228.5, add definitions of ''Automated recordkeeping system''; ''Electronic recordkeeping system''; ''Electronic signature''; and ''Eligible smaller railroad'' in alphabetical order to read as follows:

§ 228.5 Definitions.

* * * * *

Automated recordkeeping system means a recordkeeping system that—

(1) An eligible smaller railroad, or a contractor or subcontractor to such a railroad, may use instead of a manual recordkeeping system or electronic recordkeeping system to create and maintain any records subpart B of this part requires; and

(2) Conforms to the requirements of § 228.206.

* * * * *

Electronic recordkeeping system means a recordkeeping system that—

(1) A railroad may use instead of a manual recordkeeping system or automated recordkeeping system to create and maintain any records required by subpart B of this part; and

(2) Conforms to the requirements of §§ 228.201–228.205.

Electronic signature means an electronic sound, symbol, or process that—

(1) Is attached to, or logically associated with, a contract or other record;

(2) Is executed or adopted by a person with the intent to sign the record, to create either an individual's unique digital signature, or unique digitized handwritten signature; and

(3) Complies with the requirements of § 228.19(g) or § 228.206(a).

Eligible smaller railroad means either:

(1) A railroad that reported to FRA that it had less than 400,000 employee hours during the preceding three consecutive calendar years under § 225.21(d) of this chapter on Form FRA 6180.55, Annual Railroad Reports of Employee Hours by State; or

(2) A railroad operating less than 3 consecutive calendar years that reported to FRA that it had less than 400,000 employee hours during the current calendar year under § 225.21(d) of this chapter on Form FRA 6180.55, Annual Railroad Reports of Employee Hours by State.

* * * * *

■ 4. In § 228.9, revise the section heading, add headings to paragraphs (a) and (b), and add new paragraph (c) to read as follows:

§ 228.9 Manual, electronic, and automated records; general.

(a) *Manual records.* * * *

* * * * *

(b) *Electronic records.* * * *

* * * * *

(c) *Automated records.* Each automated record maintained under this part shall be—

(1) Signed electronically by the employee whose time on duty is being recorded or, in the case of a member of a train crew or a signal employee gang, digitally signed by the reporting employee who is a member of the train crew or signal gang whose time is being recorded as provided by § 228.206(a);

(2) Stamped electronically with the certifying employee's electronic signature and the date and time the employee electronically signed the record;

(3) Retained for 2 years in a secured file that prevents alteration after electronic signature;

(4) Accessible by the Administrator through a computer terminal of the railroad; and

(5) Reproducible using printers at the location where records are accessed.

■ 5. In § 228.11, revise the first sentence of paragraph (a) to read as follows:

§ 228.11 Hours of duty records.

(a) *In general.* Each railroad, or a contractor or a subcontractor of a railroad, shall keep a record of the hours of duty of each employee. * * *

* * * * *

■ 6. Revise the heading of subpart D to read as follows:

Subpart D—Electronic Recordkeeping System and Automated Recordkeeping System

■ 7. In § 228.201, revise the section heading, designate the introductory text as paragraph (a), add a heading to newly designated paragraph (a), redesignate paragraphs (1) through (6) as paragraphs (a)(1) through (6), revise the paragraphs newly designated as (a)(1), (a)(3), (a)(4), and (a)(5), and add new paragraph (b) to read as follows:

§ 228.201 Electronic recordkeeping system and automated recordkeeping system; general.

(a) *Electronic recordkeeping system.* * * *

(1) The system used to generate the electronic record meets all requirements of this paragraph (a) of this section and all requirements of §§ 228.203 and 228.205;

* * * * *

(3) The railroad, or contractor or subcontractor to the railroad, monitors its electronic database of employee hours of duty records through a sufficient number of monitoring indicators to ensure a high degree of accuracy of these records;

(4) The railroad, or contractor or subcontractor to the railroad, trains its affected employees on the proper use of the electronic recordkeeping system to enter the information necessary to create their hours of service record, as required by § 228.207;

(5) The railroad, or contractor or subcontractor to the railroad, maintains an information technology security program adequate to ensure the integrity of the system, including the prevention of unauthorized access to the program logic or individual records; and

* * * * *

(b) *Automated recordkeeping system.* For purposes of compliance with the recordkeeping requirements of subpart B of this part, an eligible smaller railroad, or a contractor or a subcontractor that provides covered service employees to such a railroad, may create and maintain any of the records required by subpart B using an automated recordkeeping system if all of the following conditions are met:

(1) The automated recordkeeping system meets all requirements of paragraph (b) of this section and all requirements of § 228.206; and

(2) The eligible smaller railroad or its contractor or subcontractor complies with all of the requirements of paragraphs (a)(2) and (a)(4) through (6) of this section for its automated records and automated recordkeeping system.

(c) If a railroad, or a contractor or subcontractor to the railroad, is no longer eligible to use an automated recordkeeping system to record data subpart B of this part requires, the entity must begin keeping manual or electronic records and must retain its automated records as required under § 228.9(c) unless the entity requests, and FRA grants, a waiver under § 211.41 of this chapter.

■ 8. Add § 228.206 to read as follows:

§ 228.206 Requirements for automated records and for automated recordkeeping systems on eligible smaller railroads, and their contractors or subcontractors that provide covered service employees to such railroads.

(a) *Use of electronic signature.* Each employee creating a record required by subpart B of this part must sign the record using an electronic signature that meets the following requirements:

(1) The record contains the printed name of the signer and the date and actual time the signature was executed, and the meaning (such as authorship, review, or approval) associated with the signature;

(2) Each electronic signature is unique to one individual and shall not be used by, or assigned to, anyone else;

(3) Before an eligible smaller railroad, or a contractor or subcontractor to such a railroad, establishes, assigns, certifies, or otherwise sanctions an individual's electronic signature, or any element of such electronic signature, the organization shall verify the identity of the individual;

(4) A person using an electronic signature shall, prior to or at the time of each such use, certify to FRA that the person's electronic signature in the system, used on or after August 29, 2018 is the legally binding equivalent of the person's traditional handwritten signature;

(5) Each employee shall sign the initial certification of his or her electronic signature with a traditional handwritten signature, and each railroad using an automated system shall maintain certification of each electronic signature at its headquarters or the headquarters of any contractor or subcontractor providing employees who perform covered service to such a railroad, and railroads, contractors, and subcontractors must make the certification available to FRA upon request; and

(6) A person using an electronic signature in such a system shall, upon FRA request, provide additional certification or testimony that a specific

electronic signature is the legally binding equivalent of his or her handwritten signature.

(b) *System security.* Railroads using an automated recordkeeping system must protect the integrity of the system by the use of an employee identification number and password, or a comparable method, to establish appropriate levels of program access meeting all of the following standards:

(1) Data input is restricted to the employee or train crew or signal gang whose time is being recorded, except that an eligible smaller railroad, or a contractor or subcontractor to such a railroad, may pre-populate fields of the hours of service record provided that—

(i) The eligible smaller railroad, or its contractor or subcontractor, pre-populates fields of the hours of service record with information the railroad, or its contractor or subcontractor knows is factually accurate for a specific employee.

(ii) The recordkeeping system may allow employees to copy data from one field of a record into another field, where applicable.

(iii) The eligible smaller railroad, or its contractor or subcontractor does not use estimated, historical, or arbitrary information to pre-populate any field of an hours of service record.

(iv) An eligible smaller railroad, or a contractor or a subcontractor to such a railroad, is not in violation of paragraph (b)(1) of this section if it makes a good faith judgment as to the factual accuracy of the data for a specific employee but nevertheless errs in pre-populating a data field.

(v) The employee may make any necessary changes to the data by typing into the field without having to access another screen or obtain clearance from railroad, or contractor or subcontractor to the railroad.

(2) No two individuals have the same electronic signature.

(3) No individual can delete or alter a record after the employee who created the record electronically signs the record.

(4) Any amendment to a record is either:

(i) Electronically stored apart from the record that it amends; or

(ii) Electronically attached to the record as information without changing the original record.

(5) Each amendment to a record uniquely identifies the individual making the amendment.

(6) The automated system maintains the records as originally submitted without corruption or loss of data. Beginning August 29, 2018, an eligible smaller railroad must retain back-up data storage for its automated records for the quarters prescribed in the following table for the time specified in § 228.9(c)(3), to be updated within 30 days of the end of each prescribed quarter—

Quarter 1	January 1 through March 31.
Quarter 2	April 1 through June 30.
Quarter 3	July 1 through September 30.
Quarter 4	October 1 through December 31.

(7) Supervisors and crew management officials can access, but cannot delete or alter, the records of any employee after the employee electronically signs the record.

(c) *Identification of the individual entering data.* If a given record contains data entered by more than one individual, the record must identify each individual who entered specific information within the record and the data the individual entered.

(d) *Search capabilities.* The automated recordkeeping system must store records using the following criteria so all records matching the selected criteria are retrieved from the same location:

(1) Date (month and year);

(2) Employee name or identification number; and

(3) Electronically signed records containing one or more instances of excess service, including duty tours in excess of 12 hours.

(e) *Access to records.* An eligible smaller railroad, or contractor or subcontractor providing covered service employees to such a railroad, must provide access to its hours of service records under subpart B that are created and maintained in its automated recordkeeping system to FRA inspectors and State inspectors participating under 49 CFR part 212, subject to the following requirements:

(1) Access to records created and maintained in the automated recordkeeping system must be obtained as required by § 228.9(c)(4);

(2) An eligible smaller railroad must establish and comply with procedures for providing an FRA inspector or participating State inspector with access to the system upon request and must provide access to the system as soon as possible but not later than 24 hours after a request for access;

(3) Each data field entered by an employee on the input screen must be visible to the FRA inspector or participating State inspector; and

(4) The data fields must be searchable as described in paragraph (d) of this section and must yield access to all records matching the criteria specified in a search.

■ 9. In § 228.207, revise paragraphs (b)(1)(iii)(B) and (c)(1)(i) to read as follows:

§ 228.207 Training.

* * * * *

(b) * * *

(1) * * *

(iii) * * *

(B) The entry of hours of service data, into the electronic system or automated system or on the appropriate paper records used by the railroad or contractor or subcontractor to a railroad for which the employee performs covered service; and

* * * * *

(c) * * *

(1) * * *

(i) Emphasize any relevant changes to the hours of service laws, the recording and reporting requirements in subparts B and D of this part, or the electronic, automated, or manual recordkeeping system of the railroad or contractor or subcontractor to a railroad for which the employee performs covered service since the employee last received training; and

* * * * *

Issued in Washington, DC.

Ronald Louis Batory,

Administrator.

[FR Doc. 2018–18639 Filed 8–28–18; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 107816769–8162–02]

RIN 0648–XG396

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Trawl Catcher Vessels in the Central Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels using trawl gear in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the annual allowance of the 2018 Pacific cod total allowable catch apportioned to trawl catcher

vessels in the Central Regulatory Area of the GOA.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), September 1, 2018, through 2400 hours, A.l.t., December 31, 2018.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679. Regulations governing sideboard protections for GOA groundfish fisheries appear at subpart B of 50 CFR part 680.

The annual allowance of the 2018 Pacific cod total allowable catch (TAC) apportioned to trawl catcher vessels in the Central Regulatory Area of the GOA not participating in the cooperative fishery of the Rockfish Program is 2,275 metric tons (mt), as established by the final 2018 and 2019 harvest specifications for groundfish of the GOA (83 FR 8768, March 1, 2018).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator) has determined that the annual allowance of the 2018 Pacific cod TAC apportioned to trawl catcher vessels in the Central Regulatory Area of the GOA is necessary to account for the incidental catch in other anticipated fisheries. Therefore, the Regional Administrator is establishing a directed fishing allowance of 0 mt and is setting aside the remaining 2,275 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher vessels using trawl gear in the Central Regulatory Area of the GOA. While this closure is effective the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip. This closure does not apply to fishing by vessels participating in the cooperative fishery of the Rockfish Program for the Central GOA.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the directed fishing closure of Pacific cod by catcher vessels using trawl gear in the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 22, 2018.

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

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

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

Dated: August 24, 2018.

Margo B. Schulze-Haugen,

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

[FR Doc. 2018–18727 Filed 8–28–18; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 83, No. 168
Wednesday, August 29, 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.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 50

RIN 3038–AE33

Amendments to Clearing Exemption for Swaps Entered Into by Certain Bank Holding Companies, Savings and Loan Holding Companies, and Community Development Financial Institutions

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is proposing rule amendments pursuant to its authority under section 4(c) of the Commodity Exchange Act (CEA) to exempt from the clearing requirement set forth in section 2(h)(1) of the CEA certain swaps entered into by certain bank holding companies, savings and loan holding companies, and community development financial institutions.

DATES: Comments must be received on or before October 29, 2018.

ADDRESSES: You may submit comments, identified by RIN number 3038–AE33 by any of the following methods:

- *CFTC website: http://comments.cftc.gov.* Follow the instructions for submitting comments through the Comments Online process on the website.
- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.

Please submit your comments using only one method.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act (FOIA), a petition for confidential treatment of the exempt information may be submitted according to the procedures established in section 145.9 of the Commission's regulations.[1]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the FOIA.

FOR FURTHER INFORMATION CONTACT: Sarah E. Josephson, Deputy Director, at 202–418–5684 or *sjosephson@cftc.gov;* Megan A. Wallace, Senior Special Counsel, at 202–418–5150 or *mwallace@cftc.gov;* or Melissa D'Arcy, Special Counsel, at 202–418–5086 or *mdarcy@cftc.gov;* Division of Clearing and Risk or Ayla Kayhan, Office of the Chief Economist, at 202–418–5947 or *akayhan@cftc.gov,* in each case at the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

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I. Background

A. Project KISS

On May 9, 2017, the Commission published in the **Federal Register** a request for information [2] pursuant to the Commission's ''Project K.I.S.S.'' initiative seeking suggestions from the public for simplifying the Commission's regulations and practices, removing unnecessary burdens, and reducing costs. In response, a number of commenters asked the Commission to adopt certain staff no-action letters and codify Commission guidance through rulemakings.[3] In its review, the Commission has identified a number of

[1] Commission regulation 145.9. Commission regulations referred to herein are found on the Commission's website at: *http://www.cftc.gov/LawRegulation/CommodityExchangeAct/index.htm.*

[2] *See* 82 FR 21494 (May 6, 2017) and 82 FR 23765 (May 24, 2017).

[3] *See, e.g.,* Comment Letter from the Institute of International Banking, International Swaps and Derivatives Association, Inc., and Securities Industry and Financial Markets Association dated July 24, 2017, at 2.

CFTC staff letters that it preliminarily believes should be codified in rulemakings, including the no-action letters that the Commission's Division of Clearing and Risk (DCR) issued in 2016 [4] providing that DCR would not recommend the Commission take enforcement action against certain small bank holding companies, savings and loan holding companies, and community development financial institutions, as such entities were described in the letters, for not clearing swaps covered by the clearing requirement of section 2(h)(1) of the CEA (Clearing Requirement), if they satisfied the terms and conditions in the letters. This proposed rulemaking is consistent with those no-action letters. Specifically, the Commission is proposing to adopt regulatory revisions pursuant to its authority in section 4(c) of the CEA to exempt from the Clearing Requirement certain swaps entered into with certain bank holding companies, savings and loan holding companies, and community development financial institutions.

As discussed more fully below, the proposed revisions to Commission regulation 50.5 would exempt from the Clearing Requirement a swap entered into to hedge or mitigate commercial risk if one of the counterparties to the swap is either (a) a bank holding company or savings and loan holding company, each having no more than $10 billion in consolidated assets, or (b) a community development financial institution transacting in certain types and quantities of swaps. The Commission believes that this proposal would be consistent with the exemption from the Clearing Requirement the Commission granted for transactions entered into with small banks, savings associations, farm credit institutions, and credit unions.[5]

B. Swap Clearing Requirement

The CEA, as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act),[6] establishes a comprehensive regulatory framework for swaps. The CEA requires a swap: (1) To be cleared through a derivatives clearing organization (DCO) that is registered under the CEA, or a DCO that is exempt from registration under the CEA, if the Commission has determined that the swap is required to be cleared, unless an exception to the Clearing Requirement applies; [7] (2) to be reported to a swap data repository (SDR) or the Commission; [8] and (3) if the swap is subject to the Clearing Requirement, to be executed on a designated contract market (DCM), or swap execution facility (SEF) that is registered with the Commission pursuant to section 5h of the CEA or a SEF that has been exempted from registration pursuant to section 5h(g) of the CEA, unless no DCM or SEF has made the swap available to trade.[9]

Pursuant to section 2(h)(1)(A) of the CEA, if a swap is subject to the Clearing Requirement, it shall be unlawful for any person to engage in a swap unless that person submits such swap for clearing to a DCO that is registered under the CEA or a DCO that is exempt from registration under the CEA.[10] In 2012, the Commission issued its first clearing requirement determination, pertaining to four classes of interest rate swaps and two classes of credit default swaps.[11] In 2016, the Commission expanded the classes of interest rate swaps subject to the Clearing Requirement to cover fixed-to-floating interest rate swaps denominated in nine additional currencies, as well as certain additional basis swaps, forward rate agreements, and overnight index swaps.[12]

C. Swaps With Small Banks, Savings Associations, Farm Credit System Institutions, and Credit Unions Not Subject to the Clearing Requirement

Section 2(h)(7)(A) of the CEA provides that the Clearing Requirement of section 2(h)(1)(A) of the CEA shall not apply to a swap if one of the counterparties to the swap: (i) Is not a financial entity; (ii) is using swaps to hedge or mitigate commercial risk; and (iii) notifies the Commission, in a manner set forth by the Commission, how it generally meets its financial obligations associated with entering into non-cleared swaps.[13] Section 2(h)(7)(C)(ii) of the CEA further directed the Commission to consider whether to exempt from the definition of ''financial entity'' small banks, savings associations, farm credit system institutions, and credit unions, including: (I) Depository institutions with total assets of $10 billion or less; (II) farm credit system institutions with total assets of $10 billion or less; or (III) credit unions with total assets of $10 billion or less.[14]

In the 2012, End-User Exception final rule implementing sections 2(h)(7)(A) and 2(h)(7)(C) of the CEA,[15] the Commission adopted Commission regulation 50.50(d) which allows a counterparty to elect not to clear swaps used to hedge or mitigate commercial risk if entered into with small banks, savings associations, farm credit system institutions, and credit unions with total assets of $10 billion or less (small financial institutions).[16]

In adopting Commission regulation 50.50(d), the Commission noted that these small financial institutions tend to serve smaller, local markets and are well situated to provide swaps to the customers in their markets for the purpose of hedging commercial risk.[17] The Commission also acknowledged that, as indicated by commenters, a large portion of the swaps executed by small financial institutions with customers likely hedge interest rate risk associated with commercial loans.[18]

[4] CFTC Letter No. 16–01 (Jan. 8, 2016); CFTC Letter No. 16–02 (Jan. 8, 2016). Chatham Financial filed a comment letter recognizing the value of codifying and refining staff guidance and no-action relief where appropriate, and recommending codifying no-action letters on which several of Chatham's clients rely, including CFTC Letter No. 16–01. *See* Comment Letter from Chatham Financial, at 7 (Sept. 29, 2017); *see also* Comment Letter from ISDA, at 12 (Sept. 29, 2017) (commenting that the current end-user exception applicable to non-financial institutions and to banks, savings associations, farm credit institutions, and credit unions with total assets of $10 billion or less is too narrow and unnecessarily burdensome as it fails to cover other types of entities that trade minimally and do not pose risks to the U.S. financial system, and supporting a shift from an asset size-based threshold applicable to certain financial institutions to a more risk-based threshold).

[5] *See* End-User Exception to the Clearing Requirement for Swaps, 77 FR 42560 (Jul. 19, 2012) (2012 End-User Exception final rule).

[6] Public Law 111–203, 124 Stat. 1376 (2010).

[7] Section 2(h)(1)(A) of the CEA.

[8] *See* Sections 2(a)(13)(G), and 4r, and 21(b) of the CEA.

[9] Section 2(h)(8) of the CEA.

[10] Section 2(h)(1)(A) of the CEA.

[11] Clearing Requirement Determination Under Section 2(h) of the CEA, 77 FR 74284 (Dec. 13, 2012).

[12] Clearing Requirement Determination Under Section 2(h) of the CEA for Interest Rate Swaps, 81 FR 71202 (Oct. 14, 2016).

[13] Section 2(h)(7)(A) of the CEA.

[14] Section 2(h)(7)(C)(ii) of the CEA.

[15] Commission regulation 50.50; *see also* 2012 End-User Exception final rule, 77 FR 42560.

[16] Commission regulation 50.50(d) exempts for the purposes of the Clearing Requirement, a person that is a ''financial entity'' solely because of section 2(h)(7(C)(i)(VIII) of the CEA if the person: (1) Is organized as a bank, as defined in section 3(a) of the Federal Deposit Insurance Act, the deposits of which are insured by the Federal Deposit Insurance Corporation; a savings association, as defined in section 3(b) of the Federal Deposit Insurance Act, the deposits of which are insured by the Federal Deposit Insurance Corporation; a farm credit system institution chartered under the Farm Credit Act of 1971; or an insured Federal credit union or State-chartered credit union under the Federal Credit Union Act; and (2) has total assets of $10,000,000,000 or less on the last day of such person's most recent fiscal year. Commission regulation 50.50(d) does not excuse the affected persons from compliance with any other applicable requirements of the CEA or in the Commission's regulations.

[17] 77 FR at 42578.

[18] *Id.* The Commission noted that many of these loans and the related swaps are not secured by cash

The Commission also noted that small financial institutions typically hedge customer swaps by entering into matching swaps, and if those swaps had to be cleared, small financial institutions would have to post margin to satisfy the requirements of the DCO—which could raise the costs for small financial institutions of hedging the risks related to these types of customer swaps to the extent they need to fund the cost of the margin posted.[19] The Commission acknowledged that some of these small financial institutions may incur initial and annual fixed clearing fees and other expenses that may be incrementally higher relative to the number of swaps executed over a given period of time.[20] Finally, the Commission stated that given the relatively low notional volume swap books held by these small institutions, and the commercial customer purposes these swaps satisfy, the Commission believed that the swaps executed by these entities were what Congress was considering when it directed the Commission to consider an exemption from the definition of ''financial entity,'' thereby allowing these entities to elect not to clear swaps that are otherwise eligible for the End-User Exception.[21]

D. DCR No-Action Letter for Relief From the Clearing Requirement for Certain Bank Holding Companies and Savings and Loan Holding Companies With Consolidated Assets of $10 Billion or Less

In 2016, in response to a request from the American Bankers Association (ABA), DCR issued a no-action letter stating that DCR would not recommend that the Commission take enforcement action against bank holding companies and savings and loan holding companies with no more than $10 billion in consolidated assets [22] for failure to comply with the Clearing Requirement if they elect not to clear a swap in accordance with the requirements of Commission regulation 50.50.[23] Because section 2(h)(7)(C)(ii) of the CEA and Commission regulation 50.50(d) only apply to depository institutions and savings associations themselves and not to bank holding companies and savings and loan holding companies, bank holding companies and savings and loan holding companies are not eligible to use the End-User Exception.

DCR was persuaded by the ABA's representation that many bank holding companies and savings and loan holding companies enter into interest rate swaps to hedge interest rate risk that they incur as a result of issuing debt securities or making loans to finance their subsidiary banks or savings associations.[24] DCR accepted the ABA's further representation that these swaps generally have a notional amount of $10 million or less, and that these bank holding companies and savings and loan holding companies enter into swaps less frequently than other swap counterparties.[25] The ABA also represented that the swaps need to be entered into by the bank holding company or savings and loan holding company, rather than by the subsidiary bank or savings association, in order to gain hedge accounting treatment.[26] DCR believed bank holding companies and savings and loan holding companies having no more than $10 billion in consolidated assets should be treated like small financial institutions, and issued a no-action letter.[27]

E. DCR No-Action Letter for Relief From the Clearing Requirement for Community Development Financial Institutions

Also in 2016, in response to a request from a coalition of community development financial institutions (Coalition), DCR issued a no-action letter stating DCR would not recommend that the Commission take enforcement action against a community development financial institution for failure to comply with the Clearing Requirement, provided the entity elects not to clear a swap in accordance with the requirements of Commission regulation 50.50 and meets the terms and conditions of the letter.[28] Some community development financial institutions are not eligible for the End-User Exception because they are not depository institutions.[29]

DCR accepted the Coalition's representation that there are public interest benefits that may be served by permitting community development financial institutions to engage in tailored and limited swaps to pursue their public interest goals without the expense of posting margin to a DCO, and the cost of initial and annual fixed clearing fees and other expenses.[30] The Coalition further represented that community development financial institutions do not provide swaps directly to customers, but there is a public interest benefit in having institutions that are able to serve smaller, local markets.[31] DCR was persuaded that status as a community development financial institution pursuant to certification by the U.S. Department of the Treasury's (Treasury Department) Community Development Financial Institutions Fund (CDFI Fund) [32] would ensure that community development financial institutions operate under a specific community development organizational mission and provide financial and community development services to a target

or other highly liquid collateral, but by less liquid assets of the customer such as the property or inventory purchased with the loan proceeds. *Id.*

[19] *See id.*

[20] *Id.*

[21] *Id.* The Commission noted that because the End-User Exception only applies to a swap if one of the counterparties to the swap is using swaps to hedge or mitigate commercial risk small financial institutions are not exempt from the Clearing Requirement for speculative trades. *Id.* n.79.

[22] Under CFTC Letter No. 16–01, the limitation of no more than $10 billion in consolidated assets means that the aggregate value of all the assets of all the bank holding company's or savings and loan holding company's subsidiaries on the last day of each subsidiary's most recent fiscal year, do not exceed $10 billion. CFTC Letter No. 16–01, at 4.

[23] CFTC Letter No. 16–01. Those requirements are that the small bank holding company or small savings and loan holding company is using swaps to hedge or mitigate commercial risk and notifies the Commission how it generally meets the obligations associated with entering into non-cleared swaps.

[24] CFTC Letter No. 16–01, at 3.

[25] *Id.*

[26] *Id.*

[27] *Id.* (highlighting the Commission's statements that small financial institutions ''may incur initial and annual fixed clearing fees and other expenses that may be incrementally higher relative to the small number of swaps they execute over a given period of time'' and that ''given the relatively low notional volume [of] swap books held by small section 2(h)(7)(C)(ii) institutions and the commercial customer purposes these swaps satisfy, the Commission believes that swaps executed by small section 2(h)(7)(C)(ii) institutions are what Congress was considering when it directed the Commission to consider an exemption from the 'financial entity' definition for small financial institutions. . . .''). Letter No. 16–01 also noted that the letter did not excuse the affected persons from compliance with any other applicable requirements contained in the CEA or in the Commission's regulations. *Id.* at 4.

[28] *See* CFTC Letter No. 16–02.

[29] *See* Certification as a Community Development Financial Institution, 12 CFR 1805.201.

[30] CFTC Letter No. 16–02, at 3.

[31] *Id.*

[32] Community development financial institutions are small in scale and tend to serve smaller, local markets. They operate under an organizational mission of providing financial and community development services to underserved target markets. Community development financial institutions are entities that must apply for, and receive, certification from the CDFI Fund. The CDFI Fund was created by section 104 of the Community Development Banking and Financial Institutions Act of 1994 (CDFI Act), which is contained in Title I of the Riegle Community Development and Regulatory Improvement Act of 1994 (Riegle Act). *See* Public Law 103–325, 108 Stat. 2160 (1994).

market.[33] Additionally, DCR believed the costs of clearing for community development financial institutions are similar to those faced by small financial institutions, and the benefits that community development financial institutions bring to communities may be the same or greater than those contributed by small financial institutions.[34]

DCR limited the letter to community development financial institutions certified as such by the Treasury Department that only engage in swaps within specific product classes that meet certain criteria, and required that each community development financial institution enter into no more than 10 swaps per year, with an aggregate notional value cap of $200 million per year.[35]

II. Proposed Amendments to Commission Regulation 50.5

The Commission proposes to exempt from the Clearing Requirement certain swap transactions entered into with bank holding companies and savings and loan holding companies with no more than $10 billion in consolidated assets, and community development financial institutions certified by the CDFI Fund. Although these entities are not eligible for the End-User Exception, the Commission believes that the same policy reasons that the Commission considered when exempting small financial institutions from the definition of a ''financial entity'' for purposes of the End-User Exception support an exemption for swap transactions entered into with certain bank holding companies, savings and loan association holding companies, and community development financial institutions.[36] The Commission notes that the proposed exemptions are intended to be consistent with the Commission's policy set forth in the 2012 End-User Exception final rule and would not limit the applicability of any CEA provision or Commission regulation to any person or transaction except as provided in the proposed rulemaking.

A. Proposed Definition of Bank Holding Company and Savings and Loan Holding Company

The Commission proposes to adopt the definitions for ''bank holding company'' and ''savings and loan holding company'' referenced in the Federal Deposit Insurance Act.[37] These definitions represent the accepted meaning for ''bank holding company'' and ''savings and loan holding company.'' The Commission used the Federal Deposit Insurance Act definitions for the banks and savings associations eligible for an exemption from the definition of ''financial entity'' in Commission regulation 50.50(d)(1).[38]

Proposed revised regulation 50.5(a) would define ''bank holding company'' to mean an entity that is organized as a bank holding company, as defined in section 2 of the Bank Holding Company Act of 1956. Section 2 of the Bank Holding Company Act generally defines a ''bank holding company,'' subject to limited exceptions, as any company which has control over any bank or over any company that is or becomes a bank holding company.[39]

Proposed revised regulation 50.5(a) would define ''savings and loan holding company'' to mean an entity that is organized as a savings and loan holding company, as defined in section 10 of the Home Owners' Loan Act of 1933. Section 10 of the Home Owners' Loan Act generally defines a ''savings and loan holding company,'' subject to limited exceptions, as any company that directly or indirectly controls a savings association or that controls any other company that is a savings and loan company.[40]

Request for Comment. The Commission seeks comment on the proposed definitions.

B. Proposed Definition of Community Development Financial Institution

Proposed revised regulation 50.5(a) would define community development financial institution to mean a community development financial institution, as defined in section 103(5) of the Community Development Banking and Financial Institutions Act of 1994, that is certified by the U.S. Department of the Treasury's Community Development Financial Institution Fund under the requirements set forth in 12 CFR 180.201(b). The proposed definition limits the entities that are eligible for the exemption. The Commission is proposing to limit the scope of entities that may qualify for an exemption from the Clearing Requirement as a community development financial institution to institutions that meet the definition of a ''community development financial institution'' in section 103 of the CDFI Act.[41] Under section 103, a ''community development financial institution'' means a person (other than an individual) that: (i) Has a primary mission of promoting community development; (ii) serves an investment area or targeted population; (iii) provides development services in conjunction with equity investments or loans, directly or through a subsidiary or affiliate; (iv) maintains, through representation on its governing board or otherwise, accountability to residents of its investment area or targeted population; and (v) is not an agency or instrumentality of the United States, or of any State or political subdivision of a State.[42]

The Commission believes that it is appropriate to require all community development financial institutions included in the proposed exemption from the Clearing Requirement to have received and maintained certification by the CDFI Fund. Certification is a formal acknowledgment from the CDFI Fund that a financial institution meets certain community development finance criteria.[43] In the event certification is

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[33] *See* CFTC Letter No. 16–02, at 3.

[34] *Id.*

[35] *Id.* at 4. DCR also required community development financial institutions to file a notice of election and additional information as described in Commission regulation 50.50(b), and limited the election of the exception to swaps entered into for the sole purpose of hedging or mitigating commercial risk as described in Commission regulation 50.50(c). *Id.* Letter No. 16–02 also noted that the letter did not excuse the affected persons from compliance with any other applicable requirements contained in the CEA or in the Commission's regulations. *Id.*

[36] *See* Section 2(h)(7)(C)(ii) of the CEA.

[37] 12 U.S.C. 1811 *et seq.* Section 3(w) of the Federal Deposit Insurance Act states that a ''bank holding company'' has the meaning given to such term in section 2 of the Bank Holding Company Act of 1956. 12 U.S.C. 1813(w)(2). Section 3(w)(3) of the Federal Deposit Insurance Act states that a ''savings and loan holding company'' has the meaning given to such term in section 10 of the Home Owners' Loan Act. 12 U.S.C. 1813(w)(3).

[38] Commission regulation 50.50(d) provides that for the purposes of section 2(h)(7)(A) of the Act, a person that is a ''financial entity'' solely because of section 2(h)(7)(C)(i)(VIII) shall be exempt from the definition of 'financial entity' if such person: (1) Is organized as a bank, as defined in section 3(a) of the Federal Deposit Insurance Act, the deposits of which are insured by the Federal Deposit Insurance Corporation; a savings association, as defined in section 3(b) of the Federal Deposit Insurance Act, the deposits of which are insured by the Federal Deposit Insurance Corporation; a farm credit system institution chartered under the Farm Credit Act of 1971; or an insured Federal credit union or State-chartered credit union under the Federal Credit Union Act; and (2) Has total assets of $10,000,000,000 or less on the last day of such person's most recent fiscal year.

[39] 12 U.S.C. 1841(a)(1) (subject to exceptions described in paragraph (5) therein).

[40] 12 U.S.C. 1467(a)(1)(D)(i) (subject to exclusions described in clause (ii)).

[41] 12 U.S.C. 4702(5).

[42] *Id.*

[43] The criteria are: (1) It has a primary mission of community development; (2) its predominant business activity is the provision of financial products or financial services; (3) it serves one or more target markets such as an investment area or target population; (4) it has a track record of

not maintained, a community development financial institution would no longer meet the definition and would no longer be able to rely on the exemption from the Clearing Requirement being proposed herein.

The Commission believes that this definition is appropriate because community development financial institutions are certified under the auspices of the Treasury Department's CDFI Fund to promote economic revitalization and community development in low-income communities.[44] Community development financial institutions certified by the CDFI Fund serve rural and urban low-income people and communities across the nation that lack adequate access to affordable financial products and services.[45] Through financial assistance and grants from the CDFI Fund, community development financial institutions are able to make loans and investments, and to provide related services for the benefit of designated investment areas, target populations, or both.[46] The Commission believes that certification by the CDFI Fund is an appropriate definition for the entities whose transactions may be exempt from the Clearing Requirement.

Request for Comment. The Commission seeks comment on this definition.

C. Proposed Exemptions From the Clearing Requirement for Certain Bank Holding Companies, Certain Savings and Loan Holding Companies and Community Development Financial Institutions

The Commission proposes to exempt from the Clearing Requirement swaps entered into with bank holding companies, savings and loan holding companies, and community development financial institutions as defined in proposed Commission regulation 50.5(a) from the Clearing Requirement.[47]

1. Certain Bank Holding Companies and Savings and Loan Holding Companies

The Commission proposes to add a new paragraph (e) to Commission regulation 50.5 exempting certain swaps entered into with bank holding companies or savings and loan holding companies from the Clearing Requirement under regulation 50.2. The Commission believes these entities generally enter into interest rate swaps to hedge interest rate risk that they incur as a result of making loans or issuing debt securities, the proceeds of which are generally used to finance their subsidiaries, which are themselves small financial institutions.[48]

The Commission believes that the bank holding companies and savings and loan holding companies that meet the conditions of CFTC Letter No. 16–01, and which would meet the requirements of proposed Commission regulation 50.5(e), enter into swaps to hedge risk from financing transactions infrequently and have relatively low notional volume swap books.[49] Since the issuance of CFTC Letter No. 16–01, five bank holding companies and two domestic financial holding companies [50] submitted forms to the Depository Trust & Clearing Corporation's (DTCC's) swap data repository, DTCC Data Repository (DDR), indicating they would elect the end-user exception for interest rate swaps between June 2016 and June 2018. Between January 1, 2017 and December 31, 2017, one bank holding company executed ten interest rate swaps with an aggregate notional value of $43.6 million, and a second bank holding company executed one interest rate swap with a notional value of $25 million. Nine entities submitted an end-user form to DDR between June 2016 and June 2018 indicating they would be electing the end-user exception for credit default swaps.[51] However, the data indicates that no credit default swaps were executed between January 1, 2017 and December 31, 2017.

The Commission believes that bank holding companies and savings and loan holding companies with consolidated assets of no more than $10 billion should be considered to be sufficiently similar to the type of non-financial entity Congress was considering when it directed the Commission to consider an exemption from the Clearing Requirement for small banks and savings associations.[52] Accordingly, the Commission is proposing to require in new regulation (e)(1) that bank holding companies and savings and loan holding companies be subject to the same asset cap as small financial institutions. New paragraph (e)(1) would require that a bank holding company or savings and loan holding company have aggregated assets, including the assets of all its subsidiaries, not exceeding $10 billion according to the value of assets of each subsidiary on the last day of each subsidiary's most recent fiscal year.

The Commission preliminarily believes there is less counterparty risk with transactions entered into with bank holding companies and savings and loan holding companies that have no more than $10 billion in consolidated assets because the Commission understands that these entities generally enter into swaps with a notional amount of $10 million or less.[53] The Commission believes it is appropriate to adopt the same limitation on asset size for bank holding companies and savings and loan holding companies as the Commission determined was appropriate for small financial institutions in the 2012 End-User Exception final rule.[54] Congress determined that the Commission should base its determination of whether a bank or savings association is ''small'' on a $10 billion asset level.[55] In adopting the cap of $10 billion for small banks and savings associations, the Commission made the policy decision not to exempt institutions with substantially higher total asset amounts, such as $30 billion, $50 billion, or higher levels because it believed that Congress has identified

providing development services to borrowers in conjunction with financing activities; (5) it maintains accountability to the residents of its target market; and (6) it is a non-government entity. *See* Certification as a Community Development Financial Institution, 12 CFR 1805.201(b)(1)–(6).

[44] As of May 31, 2018, there were 1094 certified community development financial funds consisting of 138 banks, 16 venture capital funds, 297 credit unions, 90 depository institution holding companies, and 553 loan funds. *See* list available at: *https://www.cdfifund.gov/programs-training/certification/cdfi/Pages/default.aspx.*

[45] *See supra* n.27; *see also* Community Development Financial Institutions Fund, Notice of Funds Availability, 83 FR 4750 (Feb. 1, 2018) (stating the priorities of the CDFI Fund).

[46] *See* 68 FR 5704 (Feb. 4, 2003). Additional information is available at the CDFI Fund's website: *https://www.cdfifund.gov/about/Pages/default.aspx.*

[47] The proposed exemptions would not excuse the affected persons from compliance with any other applicable requirements contained in the CEA or the Commission's regulations. The Commission notes that uncleared swaps with a counterparty that is subject to the CEA and Commission regulations with regard to that transaction must still comply with the CEA and Commission regulations as they pertain to uncleared swaps.

[48] CFTC Letter No. 16–01, at 3.

[49] *Id.*

[50] Under the Bank Holding Company Act, a bank holding company may elect to be a financial holding company. Although CFTC Letter No. 16–01 does not include no-action relief for financial holding companies, we are including these entities as they believe they are eligible for an exception and indicated they may claim the exception. Another entity indicated it was electing the end-user exception as a captive finance company rather than a small bank or other entity according to its DDR reporting form.

[51] The nine entities included the five bank holding companies, three domestic financial holding companies, and one entity electing the exception as a captive finance company.

[52] In the preamble to the 2012 End-User Exception final rule, the Commission determined that small banks and small savings associations were not ''financial entities'' for purposes of the Clearing Requirement. 77 FR at 42578.

[53] *See* CFTC Letter No. 16–01, at 3.

[54] 77 FR at 42578.

[55] *Id.*

large financial institutions as more likely to cause systemic risk and directed prudential regulators to consider prudential standards for ''large'' institutions having assets of $50 billion or more.[56] The Commission rejected the $30 billion asset level since it was three times greater than the level Congress identified as indicative of a ''small'' financial institution.[57] Therefore, the proposed exemption is would apply to bank holding companies and savings and loan holding companies with no more than $10 billion in consolidated assets, meaning that the aggregate value of the assets of all of the bank holding company's or savings and loan holding company's subsidiaries on the last day of each subsidiary's most recent fiscal year, do not exceed $10 billion.

As with other exemptions under Commission regulation 50.5, the Commission is proposing in new regulation 50.5(e)(2) that the exemption be available only if the swap is reported to an SDR pursuant to regulations 45.3 and 45.4 of this chapter. The Commission is additionally proposing that the bank holding companies and savings and loan holding companies subject to this proposal be required to report the information described in regulation 50.50(b) to an SDR. Commission regulation 50.50(b) requires a counterparty to notify the Commission that a swap is not subject to the Clearing Requirement and to indicate how the electing counterparty generally meets its financial obligations associated with its non-cleared swaps. The Commission believes that the reporting requirements are appropriate so it can verify that the exemption from the Clearing Requirement is being used in the way the Commission intended and track the entities using the Clearing Requirement exemption.

The Commission also proposes in new 50.5(e)(3) that only swaps used to hedge or mitigate commercial risk, as defined under regulation 50.50(c) of this part, may be exempt from the Clearing Requirement. The Commission believes this limitation appropriately reflects how these entities use swaps.[58] Moreover, it reflects the Commission's 2012 policy determination and Congress's determination that transactions with similar entities (such as those entered into by small banks, savings associations, farm credit system institutions, and credit unions) should be exempt from the Clearing Requirement if the transactions are used for hedging and not speculation, as long as the swap is reported to an SDR.[59] In that regard, the Commission believes that the extension of that policy to bank holding companies and savings and loan holding companies subject to the proposed regulation is appropriate and consistent with Congressional intent.

Request for Comment. The Commission requests comment on the proposed exemption from the Clearing Requirement for swaps entered into by certain bank holding companies and savings and loan holding companies with total consolidated assets of no more than $10 billion. Is such an exemption appropriate? Does such an exemption pose any risks to the swap markets or the financial system, and if so, what are those risks? Should the Commission clarify or modify the definitions included in the proposed rules? If so, what specific modifications are appropriate or necessary?

2. Community Development Financial Institutions

Proposed regulation 50.5(f) would exempt swap transactions entered into with a community development financial institution from the Clearing Requirement. The Commission believes that these entities only enter into limited interest rate swaps in the fixed-to-floating swap class and forward rate agreement class to hedge interest rate risk incurred as a result of issuing debt securities or making loans in pursuit of their organizational missions.[60] As such, the Commission believes there are public interest benefits that may be served by permitting community development financial institutions to engage in tailored and limited swaps to pursue their public interest goals without the expense of posting margin to a DCO, and the cost of initial and annual fixed clearing fees and other expenses. The Commission believes that the community development financial institutions that meet the conditions of CFTC Letter No. 16–02, and which would meet the requirements of proposed Commission regulation 50.5(f), enter into swaps to hedge risk from financing transactions infrequently and have relatively low notional volume swap books.[61]

Since the issuance of CFTC Letter No. 16–02, five community development financial institutions submitted forms to DTCC's swap data repository, DDR, indicating they would elect the end-user exception for interest rate swaps between June 2016 and June 2018. Between January 1, 2017 and June 29, 2018, three community development financial institutions executed interest rate swaps: One executed two swaps with an aggregate notional value of $5.6 million; another executed three swaps with an aggregate notional value of $116 million; and another executed three swaps with an aggregate notional value of $130 million.

The Commission believes that community development financial institutions should be considered to be sufficiently similar to the type of non-financial entities Congress was considering when it directed the Commission to consider an exemption from the Clearing Requirement for small banks and savings associations.[62]

As with the proposed exemptions discussed above for bank holding companies and savings and loan holding companies, the Commission is proposing in new regulation 50.5(f)(1) that the exemption be available only if the swap is reported to an SDR pursuant to regulations 45.3 and 45.4 of this chapter, and if all information in regulation 50.50(b) is reported to an SDR. Commission regulation 50.50(b) requires a counterparty to notify the Commission that a swap is not subject to the Clearing Requirement and to indicate how the electing counterparty generally meets its financial obligations associated with its non-cleared swaps. The Commission believes that the additional reporting requirement is appropriate so it can verify that the exemption from the Clearing Requirement is being used in the way the Commission intended and track which entities are using the Clearing Requirement exemption.

The Commission proposes to require in new regulation 50.5(f)(2)–(5) four additional requirements for swaps entered into with a community development financial institution: (1) The swap is an interest rate swap in the fixed-to-floating swap class or the forward rate agreement class, denominated in U.S. dollars, that would otherwise be subject to the Clearing Requirement; (2) the total aggregate notional value of the interest rate swaps and forward rate agreements entered into by each community development financial institution is no more than $200 million per year; (3) a community development financial institution may enter into no more than ten swap transactions as outlined above per year; and (4) the swap is used to hedge or mitigate commercial risk, as defined under Commission regulation 50.50(c). These conditions generally track the

[56] *Id.*

[57] *Id.*

[58] *See* CFTC Letter No. 16–01, at 3.

[59] *See* Section 2(h)(7)(A) of the CEA.

[60] *See* CFTC Letter No. 16–02, at 2.

[61] *Id.*

[62] 77 FR at 42578.

conditions in CFTC Letter No. 16–02, including that the exempted swaps are used to hedge or mitigate commercial risk.

The Commission believes the requirements in proposed regulation 50.5(f)(2)–(5) properly circumscribe the transactions into which these community development financial institutions may enter while providing these institutions with the flexibility to enter into swaps that will contribute to their ability to carry on their mission.[63] By limiting the product scope to U.S. dollar interest rate swaps in the fixed-to-floating swap class and forward rate agreement class, the Commission is recognizing the need to hedge or mitigate the interest rate risk of the loans, investments, and financial services provided by community development financial institutions to the target populations. In addition, the Commission preliminarily believes that limiting the total aggregate notional value of all interest rate swaps and forward rate agreements entered into during the twelve-month calendar year to less than or equal to $200 million is consistent with its policy that the swaps be used to hedge or mitigate commercial risk. In that same regard, the Commission believes the limitation of no more than 10 swaps per year that meet the other criteria also prevents these entities from arbitrarily increasing the number of swap transactions into which they enter.

Request for Comment. The Commission requests comment on whether it is in the public interest to exempt swap transactions entered into by community development financial institutions from the Clearing Requirement. The Commission is not proposing an asset cap at this time because the Commission believes that no community development financial institution certified by the CDFI Fund has consolidated assets greater than $10 billion.[64] Should the Commission consider an asset cap such that transactions entered into with a community development financial institution would not be exempt from the Clearing Requirement if the community development financial institution had aggregated assets in excess of the cap? Why or why not? If yes, should the cap be $10 billion, as with certain bank holding companies and savings and loan holding companies, or another amount? The Commission also requests comment on the proposed limitations and proposed alternatives, if any.

D. The Commission's Section 4(c) Authority

Section 4(c)(1) of the CEA empowers the Commission to promote responsible economic or financial innovation and fair competition by exempting any transaction or class of transactions, including swaps, from any of the provisions of the CEA (subject to exceptions not relevant here).[65] In enacting CEA section 4(c)(1), Congress noted that the goal of the provision ''is to give the Commission a means of providing certainty and stability to existing and emerging markets so that financial innovation and market development can proceed in an effective and competitive manner.'' [66] Section 4(c)(2) of the CEA further provides that the Commission may not grant exemptive relief unless it determines that: (A) The exemption is consistent with the public interest and purposes of the CEA; and (B) the transaction will be entered into solely between ''appropriate persons'' and the exemption will not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory responsibilities under the CEA.

The Commission believes that it would be consistent with the public interest and the purposes of the CEA to exempt from the Clearing Requirement swap transactions entered into with certain bank holding companies, savings and loan holding companies, and community development financial institutions as discussed above. In enacting the Dodd-Frank Act, Congress recognized that it may be appropriate for the Commission to exempt transactions entered into with certain small financial institutions from the Clearing Requirement. The Commission was directed to consider whether to exempt these small financial institutions from the definition of ''financial entity'' for purposes of the End-User Exception.[67]

Because they are not depository institutions, bank holding companies, savings and loan holding companies, and community development financial institutions are not eligible for the exemption from the financial entity definition.[68] The Commission believes, however, that the same policy reasons that Congress considered in directing the Commission to consider exempting swaps entered into with small financial institutions from the ''financial entity'' definition, making them eligible for the End-User Exception, support an exemption for certain swap transactions entered into with certain bank holding companies, savings and loan association holding companies, and community development financial institutions. The Commission preliminarily believes these entities tend to serve smaller, local markets and that the swaps executed by these entities likely hedge interest rate risk associated with financing in the same way as small financial institutions use swaps exempt from the Clearing Requirement through the End-User Exception to hedge the interest rate risk of commercial loans.[69]

Based on the representations of market participants, the Commission also believes the bank holding companies, savings and loan holding companies, and community development financial institutions subject to the proposed regulation would tend to enter into swaps that have smaller notional amounts.[70] While the Commission believes these entities use swaps infrequently, the Commission recognizes that these entities may choose to enter into more swaps to hedge against rising interest rates. The Commission believes that swaps are an important risk management tool and that these small entities should be afforded the means to hedge their capital costs economically in order to promote the public interest objectives of

[63] Between June 2016 and June 2018, five community development financial institutions submitted a form to DTTC's SDR indicating they would elect the end-user exception. Three community development financial institutions entered into eight interest rate swaps using the exception.

[64] *See* CDFI Program and NACA Program Awardees: A Snapshot in 2015, slide 4, ''Asset Size by Institution Type in 2015,'' prepared by the CDFI Fund (August 2017), available at: *https://www.cdfifund.gov/news-events/news/Pages/news-detail.aspx?NewsID=271&Category=Press%20Releases.*

[65] Section 4(c)(1) of the CEA, provides that in order to promote responsible economic or financial innovation and fair competition, the Commission by rule, regulation, or order, after notice and opportunity for hearing, may (on its own initiative or on application of any person) exempt any agreement, contract, or transaction (or class thereof) that is otherwise subject to section 4(a) either unconditionally or on stated terms or conditions or for stated periods and either retroactively or prospectively, or both, from any of the requirements of section 4(a), or from any other provision of the CEA. The Commission is proposing to promulgate the proposed exemptive rule pursuant to sections 4(c)(1) and 8a(5) of the CEA.

[66] H.R. Rep. No. 102–978, 102d Cong. 2d Sess. At 81 (Oct. 2, 1992), *reprinted in* 1992 U.S.C.C.A.N. 3179, 3213.

[67] *See* Section 2(h)(7)(C)(ii) of the CEA.

[68] While some community development financial institutions may be depository institutions, for purposes of the proposed exemption, these entities are acting under the auspices of their CDFI Fund certification.

[69] *See* 2012 End-User Exception final rule, 77 FR at 42578.

[70] *See* CFTC Letter No. 16–01, at 3; CFTC Letter No. 16–02, at 2.

smaller financial institutions serving smaller, local markets. The Commission believes that an exemption from the Clearing Requirement may promote responsible economic or financial innovation and fair competition because there appears to be substantial fixed costs associated with clearing swaps. For these entities, the Commission believes that the cost of clearing may be particularly costly (on a per-swap basis) in light of the small number of trades.[71] The Commission requests updated information on the clearing related costs for small entities.

Based on the discussion above, the Commission preliminarily believes that an exemption from the Clearing Requirement for these small entities should lower the cost of financing which, in turn, should enable these entities to better manage their financing risks and provide cost-effective loans to their subsidiaries, and small and middle market businesses. Additionally, the Commission also believes that the interest rate swaps may need to be entered into by the bank holding company or savings and loan holding company, rather than the subsidiary, in order to gain hedge accounting treatment which may promote efficiencies to benefit their subsidiaries.[72] Accordingly, while bank holding companies and savings and loan holding companies are not depository institutions and do not themselves issue commercial loans, the Commission preliminarily believes that the exemption would ultimately support the commercial lending and depository activities of their subsidiaries.

The Commission believes that the proposed amendments to the Clearing Requirement would be available only to ''appropriate persons.'' Section 4(c)(3) of the CEA includes within the term ''appropriate person'' a number of specified categories of persons, including among others, banks, savings associations and such other persons that the Commission determines to be appropriate in light of their financial or other qualifications, or the applicability of appropriate regulatory protections. Sections 2(e) and 5(d)(11)(A) of the CEA provide that only eligible contract participants (ECPs) may enter into uncleared swaps.[73] The Commission believes the bank holding companies, savings and loan holding companies, and community development financial institutions subject to this proposed regulation are ECPs pursuant to section 1a(18)(A)(i) of the CEA. Because the ECP definition is generally more restrictive than the comparable elements of the enumerated ''appropriate person'' definition, the Commission believes that the class of persons eligible to rely on the proposed exemptions will be limited to ''appropriate persons'' within the scope of section 4(c) of the CEA.

The Commission notes that certain bank holding companies, savings and loan holding companies, and community development financial institutions have not been clearing certain swaps covered by the Clearing Requirement in reliance on the DCR no action letters. The Commission is not aware of any increase in counterparty risk attributable to the affected entities' reliance on the no-action letters. The proposed exemptions from the Clearing Requirement are limited in scope and, as described further below, the Commission will continue to have access to information regarding the swaps subject to this exemption because they will be reported to an SDR as required by existing Commission regulation 50.50. In addition, the Commission retains its special call, anti-fraud, and anti-evasion authorities, which will enable it to adequately discharge its regulatory responsibilities under the CEA. The Commission therefore preliminarily believes the exemption would not have a material adverse effect on the ability of the Commission to discharge its regulatory responsibilities under the CEA.

For the reasons described in this proposal, the Commission believes it would be appropriate and consistent with the public interest to amend Commission regulation 50.5 as proposed.

Request for Comment. The Commission requests general comments regarding the proposal and on whether the proposed amendments to regulation 50.5 would be an appropriate exercise of the Commission's authority under CEA section 4(c), including whether the proposed exemptions promote the public interest. Are there any entities covered by this proposed rulemaking that would not be ''appropriate persons'' under section 4(c)(3) of the CEA? Additionally, the Commission requests comment on whether the proposed exemptions provide certainty and stability to existing and emerging markets so that financial innovation and market development can proceed in an effective and competitive manner.

III. Proposed Rules Do Not Effect Margin Requirements for Uncleared Swaps

Under Commission regulation 23.150(b)(1), the margin requirements for uncleared swaps under Part 23 of the Commission's regulations do not apply to a swap if the counterparty qualifies for an exception from clearing under section 2(h)(7)(A) and implementing regulations.[74] Commission regulation 23.150(b) was added to the final margin rules after the Terrorism Risk Insurance Program Reauthorization Act of 2015 (TRIPRA) [75] amended section 731 of the Dodd-Frank Act by adding section 4s(e)(4) to the CEA to provide that the initial and variation margin requirements will not apply to an uncleared swap in which a non-financial entity (including a small financial institution and a captive finance company) qualifies for an exception under section 2(h)(7)(A) of the CEA, as well as two exemptions from the clearing requirement that are not relevant in this context.[76]

The proposed rules are not implementing section 2(h)(7)(A) of the CEA. The Commission, pursuant to its 4(c) authority (as discussed above), is proposing to exempt swaps entered into by certain bank holding companies, savings and loan holding companies and community development financial institutions from the Clearing Requirement. The Commission is not proposing to exclude these entities from the ''financial entity'' definition of section 2(h)(7)(C) of the CEA. Therefore, the bank holding companies, savings and loan holding companies, and community development financial institutions under the proposed rules are not eligible to elect the End-User Exception under Commission regulation 50.50, and they remain financial entities under the definition of section 2(h)(7)(C) of the CEA.

[71] The 2012 End-User Exception final rule's cost estimate for clearing related costs pursuant to the End-User Exemption (''institutions will spend between $2,500 and $25,000 in legal fees related to reviewing and negotiating clearing-related documentation, and . . . a minimum of between $75,000 and $125,000 per year on fees paid to each [futures commission merchant] with which it maintains a relationship''). *See* 77 FR at 42577 n.74.

[72] CFTC Letter No. 16–01, at 3.

[73] Section 2(e) of the CEA limits non-ECPs to executing swaps transactions on DCMs and section 5(d)(11)(A) of the CEA requires all DCM transactions to be cleared. Accordingly, the two provisions read together only permit ECPs to execute uncleared swap transactions.

[74] Commission regulation 23.150(b)(1).

[75] Public Law 114–1, 129 Stat. 3.

[76] Commission regulation 23.150(b)(2) provides that certain cooperative entities that are exempt from the Commission's clearing requirement pursuant to section 4(c)(1) authority also are exempt from the initial and variation margin requirements. None of the entities included in this proposal is a cooperative that would meet the conditions in Commission regulation 23.150(b)(2). In addition, the regulation 23.150(b)(3), which pertains to affiliated entities, does not apply in this context.

For the reasons stated above, the proposed rules do not implicate any of the provisions of section 4s(e)(4) of the CEA or Commission regulation 23.150.[77]

IV. Cost-Benefit Considerations

A. Statutory and Regulatory Background

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders.[78] Section 15(a) further specifies that the costs and benefits shall be evaluated in light of the following five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness and financial integrity; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations (collectively referred to herein as the Section 15(a) Factors).

The baseline for the Commission's consideration of the costs and benefits of this proposed rulemaking is the market as it exists under section 2(h)(1) of the CEA and existing Commission Regulation 50.5. The effect of the proposing release is the exemption of certain swaps with certain bank holding companies, savings and loan holding companies, and community development financial institutions from the Clearing Requirement through new proposed regulations 50.5(e) and (f). The Commission believes the entities whose transactions will be exempted by this proposing release are similar to the entities that are already exempt by Commission regulation 50.50(d) both in terms of their operational and business practices and their participation in the swaps markets.[79] Consequently, the Commission preliminarily expects the effects of the proposed amendments and the resulting costs and benefits will parallel the considerations of the 2012 End-User Exception final rule. The Commission recognizes that, to the extent that market participants have relied on CFTC Letter Nos. 16–01 and 16–02, the actual costs and benefits of the proposed rule as realized in the market may not be as significant as compared to the baseline. The Commission has endeavored to assess the expected costs and benefits of the proposed rule in quantitative terms where possible. Where estimation or quantification is not feasible, the Commission has provided its discussion in qualitative terms.

The Commission notes that the consideration of costs and benefits below is based on the understanding that the markets function internationally, with many transactions involving U.S. firms taking place across international boundaries; with some Commission registrants being organized outside of the United States; with leading industry members typically conducting operations both within and outside the United States; and with industry members commonly following substantially similar business practices wherever located. Where the Commission does not specifically refer to matters of location, the below discussion of costs and benefits refers to the effects of the proposed rule on all activity subject to the proposed and amended regulations, whether by virtue of the activity's physical location in the United States or by virtue of the activity's connection with or effect on U.S. commerce under section 2(i) of the CEA.[80] In particular, the Commission notes that some entities affected by this proposed rulemaking may be located outside of the United States.

In the sections that follow, the Commission considers: (1) The costs and benefits of the proposed exemptions for certain bank holding companies, savings and loan holding companies, and community development financial institutions from the Clearing Requirement in Commission Regulation 50.5, and (2) the impact of the exemptions on the Section 15(a) Factors.

B. Consideration of the Costs and Benefits of the Commission's Action

1. Costs

Proposed regulations 50.5(e) and (f) would exempt certain swap transactions entered into with certain bank holding companies, savings and loan holding companies, and community development financial institutions from the Clearing Requirement. By exempting transactions with these entities from the Clearing Requirement, the Commission recognizes that the benefits of central clearing will not accrue to swaps entered into by these entities. The primary cost of the proposed exemptions from the Clearing Requirement is, therefore, that transactions with certain bank holding companies and savings and loan holding companies, and community development financial institutions would not be subject to the Clearing Requirement.

In general, the principal risk to the financial system that central clearing seeks to address is counterparty credit risk. A DCO manages this risk by collecting initial and variation margin from its clearing members. DCOs set margin levels and calculate and collect variation margin daily as prices move. This allows DCOs to mitigate the possibility of its default, and to cover the losses due to default of a clearing member. By exempting transactions with these entities from the Clearing Requirement, the Commission recognizes that the risk-mitigating benefits of clearing will not attach to those transactions.

However, the Commission believes that the entities covered by the proposed exemptions tend to be entities that would have relatively modest contributions to systemic risk. For instance, the Commission believes that the bank holding companies and savings and loan holding companies subject to the proposed regulation generally enter into swaps with a notional amount of $10 million or less and enter into swaps less frequently that other counterparties. Under the proposed rule, the exemption would only extend to swaps with community development financial institutions to the extent that they engage in swaps within specific product classes and the total aggregate notional value of all interest rate swaps and forward rate agreements entered into during a calendar year is less than $200 million.

The Commission proposes to require counterparties using the proposed exemption to comply with Commission regulation 50.50(b). Commission regulation 50.50(b) requires a counterparty to notify the Commission that the swap is not subject to the Clearing Requirement and to indicate how the electing counterparty generally meets its financial obligations associated with its non-cleared swaps. In general, the Commission believes the notification will be made by the swap dealer (SD). The bank holding companies, savings and loan holding companies, and community development financial institutions subject to this proposed regulation would provide the notification only for those swaps that are not entered into with a SD as the counterparty. While the Commission anticipates that the number of such swaps would be small, there is a lack of specific quantitative evidence regarding that number. As a practical matter, the procedure in proposed regulation 50.5 is the same as that

[77] The Commission also preliminarily believes that the proposed rules do not affect the margin rules for entities that are supervised by the prudential regulators. The prudential regulators' rules contain provisions that are identical to Commission regulation 23.150. *See* Margin and Capital Requirements for Covered Swap Entities, 80 FR 74916, 74923 (Nov. 20, 2015).

[78] Section 15(a) of the CEA.

[79] *See* Commission regulation 50.50(d).

[80] Section 2(i) of the CEA.

required under the DCR no-action letter currently in effect. For this reason, the Commission believes that the practical effect of the rule change will not impose substantial additional compliance costs on these entities.

The $10 billion cap applied to certain bank holding companies and savings and loan holding companies is a bright line. Due to the nature of using a bright line as a threshold, it is possible that some entities with attributes similar to those exempted entities may not be eligible for the exemption.[81] It is also possible that some bank holding companies or savings and loan holding companies could make operational and business decisions that would allow them to qualify for the exemption from the Clearing Requirement. However, the Commission does not expect that an entity will limit its potential revenue in order to maintain a smaller size thereby permitting it to rely on this proposed exemption.

For these reasons, the costs associated with the proposed rule are likely to be low.

Request for Comment. The Commission requests comment on whether the proposed exemptions for certain bank holding companies, savings and loan holding companies, and community development financial institutions from the Clearing Requirement would contribute to systemic risk. The Commission requests comment, including any analysis, on the number of bank holding companies, savings and loan holding companies, and community development financial institutions would rely on the proposed exemption. The Commission also requests comment, including any analysis, on the number of bank holding companies, savings and loan holding companies, and community development financial institutions that have exercised an election not to clear swaps pursuant to the DCR no-action letters. The Commission requests comment, including any available quantitative data and analysis, of the swap trading behavior of these entities.

2. Benefits

Certain bank holding companies, savings and loan holding companies, and community development financial institutions would benefit from an exemption from the Clearing Requirement for their transactions used to hedge interest rate risk because project financing and risk management transactions with these entities would not be subject to the Clearing Requirement or have the added expense of required clearing. The Commission believes the financial system benefits from having the bank holding companies and savings and loan holding companies subject to this proposal enter into interest rate swaps to hedge interest rate risk they incur as a result of issuing debt securities or making loans to finance their subsidiary banks or savings associations. The Commission also preliminarily believes that the interest rate swaps may need to be entered into by the bank holding company or savings and loan holding company, rather than the subsidiary, in order to gain hedge accounting treatment that may promote efficiencies to benefit their subsidiaries.[82] The Commission preliminarily believes that costs of clearing for community development financial institutions are similar to those faced by small financial institutions and the benefits that community development financial institutions bring to communities may be significant.[83] The Commission believes that small communities and certain target populations will benefit from the proposed exemptions through cost savings by not having to clear a swap.

Request for Comment. The Commission requests comment on the benefits of providing an exemption from the Clearing Requirement to certain bank holding companies, savings and loan holding companies, and community development financial institutions as discussed above. In particular, the Commission is interested in quantitative data on the magnitude of the costs savings from the exemption, and how these lower costs might affect the entities' behavior.

C. Section 15(a) Factors

The discussion that follows supplements the related costs and benefit considerations addressed in the preceding section and addresses the overall effect of the proposed rule in terms of the factors set forth in section 15(a) of the CEA.

1. Protection of Market Participants and the Public

Section 15(a)(2)(A) of the CEA requires the Commission to evaluate the costs and benefits of a proposed regulation in light of considerations of protection of market participants and the public. In developing the proposed rule, the Commission was cognizant that in enacting the Dodd-Frank Act, Congress directed the Commission to consider an exemption from the definition of ''financial entity,'' and therefore an exemption from the Clearing Requirement, for small banks, savings associations, farm credit system institutions, and credit unions.[84] The extension of similar regulatory treatment to swaps entered into by certain bank holding companies, savings and loan holding companies, and community development financial institutions makes the Commission's policy consistent with the existing exemption granted for small depository institutions by section 2(h)(7)(C)(ii) and Commission regulation 50.50(d).

Like the financial institutions listed in section 2(h)(7)(C)(ii), the Commission believes these entities are likely to have limited swap exposure, both in terms of value and number. As such, the Commission preliminarily believes the exemption will have a minimal impact on market participants. In addition, counterparties to a swap entered into with a bank holding company, savings and loan holding company, or community development financial institution subject to this proposed regulation will have some degree of protection against default because the electing entity is required to indicate how it generally meets the financial obligations associated with its non-cleared swaps as required by Commission regulation 50.50(b). This will ensure that counterparties are aware of the potential exposure each transaction may have on the overall risk profile of the entities.

The Commission also preliminarily believes that the asset cap for bank holding companies and savings and loan holding companies whose transactions will be subject to an exemption from the Clearing Requirement, combined with the required adherence to the requirements of Commission regulation 50.50(b) and (c) means the proposed exemptions are not likely to pose systemic or significant counterparty risk. Therefore, the Commission believes the proposed exemptions are not likely to have a negative impact on market participants or the public.

2. Efficiency, Competitiveness, and Financial Integrity of Swap Markets

Section 15(a)(2)(B) of the CEA requires the Commission to evaluate the costs and benefits of a proposed regulation in light of efficiency, competitiveness, and financial integrity

[81] While the Commission is not proposing a size threshold for community development financial institutions, the Commission believes, as discussed above, that community development financial institutions generally fall under the same $10 billion size threshold.

[82] *Id.* at 3.

[83] *Id.*

[84] *See* Section 2(h)(7)(C)(ii) of the CEA.

considerations. As noted above, the Commission preliminarily believes that the proposed amendments to Commission regulation 50.5 would lower the cost of using swaps for the bank holding companies, savings and loan holding companies, and community development financial institutions subject to this proposal, and in that sense, make trading more efficient. The Commission preliminarily believes that because of the small number of anticipated entities falling under the exemption and the low notional value of the swaps they execute, there would be a minimal impact on the efficiency of the swap marketplaces they operate in and the financial integrity of the swap markets. Consequently, the Commission believes the impact of the proposed exemptions on the efficiency, competitiveness, and financial integrity of the swap markets to be negligible.

3. Price Discovery

Section 15(a)(2)(C) of the CEA requires the Commission to evaluate the costs and benefits of a proposed regulation in light of price discovery considerations. The Commission preliminarily believes that the proposed rule will not have a significant impact on price discovery. Swap transactions, regardless of the counterparty, are required by section 2(a)(13)(G) of the CEA to be reported to an SDR. Moreover, the proposed regulation maintains this reporting requirement; the price discovery function of the reporting requirement to an SDR is therefore unchanged.

4. Sound Risk Management Practices

Section 15(a)(2)(D) of the CEA requires the Commission to evaluate the costs and benefits of a proposed regulation in light of sound risk management practices. These proposed exemptions reflect the Commission's determination that sound public policy supports the finding that certain swaps entered into by certain bank holding companies and savings and loan holding companies, and community development financial institutions subject to this proposal should not be subject to the Clearing Requirement. This preliminary conclusion is based on the Commission's determination that swaps entered into by these entities are similar to swaps entered into by the small financial institutions set out in section 2(h)(7)(C)(ii) of the CEA and should be treated in a similar manner. The Commission believes that the proposed exemptions therefore should better serve the financial markets by enabling these entities to use swaps for hedging purposes at a potentially lower cost. Furthermore, the Commission does not believe that swap transactions with these entities pose risk to the U.S. financial markets. As discussed earlier, the Commission believes that these entities generally use swaps to mitigate the interest rate risk exposure associate with their financing activities.

5. Other Public Interest Considerations

Section 15(a)(2)(E) of the CEA requires the Commission to evaluate the costs and benefits of a proposed regulation in light of other public interest considerations. The Commission has not identified any public interest considerations relevant to this proposed rule beyond those already noted above.

D. General Request for Comment

The Commission requests comment on all aspects of the costs and benefits relating to the proposed exemption of swaps entered into by certain bank holding companies, savings and loan holding companies, and community development financial institutions from the Clearing Requirement. The Commission requests that commenters provide any data or other information that would be useful in estimating the quantifiable costs and benefits of this proposed rulemaking.

E. Antitrust Considerations

Section 15(b) of the CEA requires the Commission to take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the purposes of the CEA, in issuing any order or adopting any Commission rule or regulation (including any exemption under section 4(c) or 4c(b)), or in requiring or approving any bylaw, rule, or regulation of a contract market or registered futures association established pursuant to section 17 of the CEA.[85]

The Commission believes that the public interest to be protected by the antitrust laws is generally to protect competition. The Commission requests comment on whether the proposed rule implicates any other specific public interest to be protected by the antitrust laws.

The Commission has considered the proposed rule to determine whether it is anticompetitive and does not anticipate that the proposed rule will have any anticompetitive effects or result in anticompetitive behavior. The Commission nevertheless encourages comments from the public on any aspect of the proposal that may be inconsistent with the antitrust laws or anticompetitive in nature. For example, the Commission is generally interested in whether providing this exemption to certain bank holding companies, savings and loan holding companies, and community development financial institutions could have anticompetitive effects. Accordingly, the Commission requests comment on whether the proposal in total, or its individual parts, could be deemed anticompetitive.

Because the Commission has preliminarily determined that the proposed rule is not anticompetitive and has no anticompetitive effects, the Commission has not identified any less anticompetitive means of achieving the purposes of the CEA. The Commission requests comment on whether there are less anticompetitive means of achieving the relevant purposes of the CEA that would otherwise be served by adopting the proposed rule.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires federal agencies to consider whether the regulations they propose will have a significant impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis on the impact.[86] The Commission previously has established certain definitions of small entities to be used in evaluating the impact of its regulations on small entities in accordance with the RFA.[87] The proposed regulations will not affect any small entities as that term is used in the RFA. The proposed rule would affect specific counterparties to an uncleared swap: Bank holding companies, savings and loan holding companies, and community development financial institutions subject to the proposed regulations. Pursuant to sections 2(e) and 5(d)(11)(A) of the CEA, only ECPs may enter into uncleared swaps. As financial institutions, these bank holding companies, savings and loan holding companies, and community development financial institutions are ECPs pursuant to CEA section 1a(18)(A)(i). The Commission previously determined that ECPs are not small entities for RFA purposes.[88] Because ECPs are not small entities, and persons not meeting the definition of ECP may not conduct transactions in uncleared swaps, the Commission need not conduct a regulatory flexibility

[85] Section 15(b) of the CEA.

[86] 5 U.S.C. 601 *et seq.*

[87] 47 FR 18618 (Apr. 30, 1982).

[88] *See* 66 FR 20740, 20743 (Apr. 25, 2001).

analysis respecting the effect of these proposed rules on ECPs.

Accordingly, this proposed rule will not have a significant economic effect of any small entity. Therefore, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the proposed regulations will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) [89] imposes certain requirements on Federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information, as defined by the PRA. This proposed rulemaking would not result in a new collection of information from these entities within the meaning of the PRA.[90]

List of Subjects in 17 CFR Part 50

Business and industry; Swaps.

For the reasons set for in the preamble, the Commodity Futures Trading Commission proposes to amend part 50 of title 17 of the Code of Federal Regulations as follows:

PART 50—CLEARING REQUIREMENT AND RELATED RULES

■ 1. The authority citation for part 50 is revised to read as follows:

Authority: 7 U.S.C. 2(h), 6(c), and 7a–1 as amended by Pub. L. 111–203, 124 Stat. 1376.

■ 2. In § 50.5,
■ a. Redesignate paragraphs (a) and (b) as paragraphs (b) and (c);
■ b. Add new paragraph (a);
■ c. Add and reserve paragraph (d); and
■ d. Add paragraphs (e) and (f).

The additions read as follows:

§ 50.5 Swaps exempt from a clearing requirement.

(a) *Definitions.* For the purposes of § 50.5:

Bank holding company means an entity that is organized as a bank holding company, as defined in section 2 of the Bank Holding Company Act of 1956;

Community development financial institution means a community development financial institution, as defined in section 103(5) of the Community Development Banking and Financial Institutions Act of 1994, and is certified by the U.S. Department of the Treasury's Community Development Financial Institution Fund as meeting the requirements set forth in 12 CFR 1805.201(b);

Savings and loan holding company means an entity that is organized as a savings and loan holding company, as defined in section 10 of the Home Owners' Loan Act of 1933.

* * * * *

(d) [Reserved]

(e) Swaps entered into by a bank holding company or savings and loan holding company shall be exempt from the clearing requirement under § 50.2, provided that:

(1) The bank holding company or savings and loan holding company has aggregated assets, including the assets of all its subsidiaries, that do not exceed $10,000,000,000 according to the value of assets of each subsidiary on the last day of each subsidiary's most recent fiscal year;

(2) The bank holding company or savings and loan holding company reports the swap to a swap data repository pursuant to §§ 45.3 and 45.4 of this chapter, and reports all information described under § 50.50(b) to a swap data repository; and

(3) The swap is used to hedge or mitigate commercial risk, as defined under § 50.50(c).

(f) Swaps entered into by a community development financial institution shall be exempt from the clearing requirement under § 50.2 provided, that:

(1) The community development financial institution reports the swap to a swap data repository pursuant to §§ 45.3 and 45.4 of this chapter, and reports all information described under § 50.50(b) to a swap data repository; and

(2) The swap is a U.S. dollar denominated interest rate swap in the fixed-to-floating class or the forward rate agreement class of swaps that would otherwise be subject to the clearing requirement under § 50.2;

(3) The total aggregate notional value of the interest rate swaps and forward rate agreements entered into during the twelve-month calendar year is less than or equal to $200,000,000;

(4) The swap is one of ten or fewer swap transactions that the community development financial institution enters into within a twelve-month calendar year; and

(5) The swap is used to hedge or mitigate commercial risk, as defined under § 50.50(c).

Issued in Washington, DC, on August 23, 2018, by the Commission.

Christopher Kirkpatrick,

Secretary of the Commission.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendices to Amendments to Clearing Exemption for Swaps Entered Into by Certain Bank Holding Companies, Savings and Loan Holding Companies, and Community Development Financial Institutions

Appendix 1—Commission Voting Summary

On this matter, Chairman Giancarlo and Commissioners Quintenz and Behnam voted in the affirmative. No commissioner voted in the negative.

Appendix 2—Statement of Chairman J. Christopher Giancarlo

Consistent with the overall goals of Project KISS, this proposal would codify Commission policy laid out in the preamble to the 2012 End-User Exception final rule and several staff no-action letters. It will also provide clarity and reduce unnecessary burdens on bank holding companies and savings and loan holding companies with consolidated assets of $10 billion or less, and certain community development financial institutions.

I want to thank Commission staff for their intelligent work on this proposal. I am grateful to Commissioners Quintenz and Behnam and for their thoughtful input and unanimous support.

[FR Doc. 2018–18618 Filed 8–28–18; 8:45 am]

BILLING CODE 6351–01–P

[89] 44 U.S.C. 3507(d).

[90] The applicable collections of information are ''Regulations 45.2. 45.3, and 45.4—Swap Data Recordkeeping and Reporting Requirement,'' OMB control number 3038–0086; ''Rule 50.50 End-User Notification of Non-Cleared Swaps,'' OMB control number 3038–0085.

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

[SATS No. TX–068–FOR; Docket ID: OSM–2018–0002; S1D1S SS08011000 SX064A000 189S180110; S2D2S SS08011000 SX064A000 18XS501520]

Texas Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are announcing receipt of a proposed amendment to the Texas regulatory program (Texas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Texas proposes revisions to its regulations regarding annual permit fees

for calendar years 2017 and 2018. Texas also proposes to remove a restriction in its rules that conflicts with the United States Bankruptcy Code.

This document gives the times and locations where the Texas program documents and this proposed amendment to that program are available for your inspection, establishes the comment period during which you may submit written comments on the amendment, and describes the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4:00 p.m., CST, September 28, 2018. If requested, we will hold a public hearing on the amendment on September 24, 2018. We will accept requests to speak at a hearing until 4:00 p.m., CST on September 13, 2018.

ADDRESSES: You may submit comments, identified by SATS No. TX–068–FOR, by any of the following methods:

- *Mail/Hand Delivery:* William Joseph, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 1645 South 101st East Avenue, Suite 145, Tulsa, Oklahoma 74128–4629.
- *Fax:* (918) 581–6419.
- *Federal eRulemaking Portal:* The amendment has been assigned Docket ID OSM–2018–0002. If you would like to submit comments go to *http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Comment Procedures'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to review copies of the Texas program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSMRE's Tulsa Field Office, or the full text of the program amendment is available for you to review at *www.regulations.gov.*

William Joseph, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 1645 South 101st East Avenue, Suite 145, Tulsa, Oklahoma 74128–4629, Telephone: (918) 581–6430, Email: *bjoseph@osmre.gov*

In addition, you may review a copy of the amendment during regular business hours at the following location:

Surface Mining and Reclamation Division, Railroad Commission of Texas, 1701 North Congress Avenue, P.O. Box 12967, Austin, Texas 78711–2967, Telephone: (512) 463–6900

FOR FURTHER INFORMATION CONTACT: William Joseph, Director, Tulsa Field Office. Telephone: (918) 581–6430, email: *bjoseph@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Texas Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Texas program effective February 16, 1980. You can find background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Texas program in the February 27, 1980, **Federal Register** (45 FR 12998). You can also find later actions concerning the Texas program and program amendments at 30 CFR 943.10, 943.15, and 943.16.

II. Description of the Proposed Amendment

By letter dated February 7, 2018 (Administrative Record No. TX–706), Texas sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*) at its own initiative. Below is a summary of the changes proposed by Texas. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

§ 12.108. Permit Fees.

Texas proposes to revise its regulation at 16 Texas Administrative Code (TAC) section 12.108(b) regarding annual permit fees by:

(1) Amending the calendar years specified in paragraph (b) to calendar year 2017 and 2018;

(2) Decreasing the amount of the fee, from $13.05 to $12.85, for each acre of land within a permit area covered by a reclamation bond on December 31st of the year; and

(3) Decreasing the amount of the fee, from $6,600 to $6,170, for each permit in effect on December 31st of the year.

Texas fully funds its share of costs to regulate the coal mining industry with fees paid by the coal industry. To meet these costs, Texas charges a permit application fee and two annual fees, as mentioned above. The proposed fee revisions are intended to provide adequate funding to pay the State's cost of operating its regulatory program, and provide incentives for industry to accomplish reclamation and achieve bond release as quickly as possible.

§ 12.309. Terms and Conditions of the Bond.

Texas proposes to revise its regulation at 16 Texas Administrative Code (TAC) section 12.309(j)(2)(B) by:

(1) Removing the condition that self-bond applicants not have been subject to bankruptcy proceedings during the 5-year period immediately preceding the date of application.

Texas proposes this revision to conform with the United States Bankruptcy Code at 11 U.S.C. 525(a) and 30 CFR 800.23(b)(2).

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Electronic or Written Comments

If you submit written comments, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final program will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., CST on September 13, 2018. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

Pursuant to Office of Management and Budget (OMB) Guidance and dated October 12, 1993, the approval of state program amendments is exempted from OMB review under Executive Order 12866.

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSMRE for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 14, 2018.

Alfred L. Clayborne,

Regional Director, Mid-Continent Region.

[FR Doc. 2018–18705 Filed 8–28–18; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 219, and 252

[Docket DARS–2018–0035]

RIN 0750–AJ21

Defense Federal Acquisition Regulation Supplement: Inapplicability of Certain Laws and Regulations to Commercial Items (DFARS Case 2017–D010); Reopening of Comment Period

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule; reopening of comment period.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement sections of the National Defense Authorization Act for Fiscal Year 2017 that addresses the inapplicability of certain laws and regulations to the acquisition of commercial items, including commercially available off-the-shelf items. The comment period on the proposed rule is reopened for 60 days.

DATES: For the proposed rule published on June 29, 2018 (83 FR 30646), submit comments by October 28, 2018.

ADDRESSES: Submit comments identified by DFARS Case 2017–D010, using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Search for ''DFARS Case 2017–D010.'' Select ''Comment Now'' and follow the instructions provided to submit a comment. Please include ''DFARS Case 2017–D010'' on any attached documents.
- *Email: osd.dfars@mail.mil.* Include DFARS Case 2017–D010 in the subject line of the message.
- *Fax:* 571–372–6094.
- *Mail:* Defense Acquisition Regulations System, Attn: Ms. Barbara J. Trujillo, OUSD(D&S)DPC/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Barbara J. Trujillo, telephone 571–372–6102.

SUPPLEMENTARY INFORMATION:

I. Background

On June 29, 2018, DoD published a proposed rule in the **Federal Register** at 83 FR 30646 to implement the requirement of section 874 of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114–328). Section 874 requires DoD to address the inapplicability of certain laws and regulations to the acquisition of commercial items, including commercially available off-the-shelf items.

The comment period for the proposed rule is reopened 60 days, from August 28, 2018, to October 28, 2018, to provide additional time for interested parties to comment on the proposed DFARS changes.

48 CFR Parts 212, 219, and 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

[FR Doc. 2018–18616 Filed 8–28–18; 8:45 am]

BILLING CODE 5001–06–P

Notices

Federal Register
Vol. 83, No. 168
Wednesday, August 29, 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

Rural Business-Cooperative Service

Inviting Applications for the Delta Health Care Services Grant Program

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: This Notice announces that the Rural Business-Cooperative Service (Agency) is accepting fiscal year (FY) 2018 applications for the Delta Health Care Services (DHCS) grant program. The Agency will publish the program funding level on the Rural Development website: *https://www.rd.usda.gov/programs-services/delta-health-care-services-grants.* The purpose of this program is to provide financial assistance to address the continued unmet health needs in the Delta Region through cooperation among health care professionals, institutions of higher education, research institutions, and economic development entities in the Delta Region.

DATES: You must submit completed applications for grants according to the following deadlines:

Paper copies must be postmarked and mailed, shipped, or sent overnight no later than Midnight Eastern Time November 26, 2018. Electronic copies must be received by Midnight Eastern Time November 19, 2018. Late applications are not eligible for funding under this Notice and will not be evaluated.

ADDRESSES: You should contact your USDA Rural Development State Office (State Office) if you have questions. You are encouraged to contact your State Office well in advance of the application deadline to discuss your Project and ask any questions about the application process. A list of State Office contacts can be found at: *http://www.rd.usda.gov/contact-us/state-offices.* Program guidance as well as application templates may be obtained at: *http://www.rd.usda.gov/programs-services/delta-health-care-services-grants* or by contacting your State Office. If you want to submit an electronic application, follow the instructions for the DHCS funding announcement located at: *http://www.grants.gov.* Please review the *Grants.gov* website for instructions on the process of registering your organization as soon as possible to ensure you can meet the electronic application deadline. You are strongly encouraged to file your application early and allow sufficient time to manage any technical issues that may arise. If you want to submit a paper application, send it to the State Office located in the State where the Project will primarily take place.

FOR FURTHER INFORMATION CONTACT: Grants Division, Cooperative Programs, Rural Business-Cooperative Service, United States Department of Agriculture, 1400 Independence Avenue SW, MS 3253, Room 4208-South, Washington, DC 20250–3250, or call 202–690–1374.

SUPPLEMENTARY INFORMATION:

Preface

The Agency encourages applications that will support recommendations made in the Rural Prosperity Task Force report to help improve life in rural America, *https://www.usda.gov/topics/rural/rural-prosperity.* Applicants are encouraged to consider projects that provide measurable results in helping rural communities build robust and sustainable economies through strategic investments in infrastructure, partnerships and innovation. Key strategies include:

- Achieving e-Connectivity for rural America
- Developing the Rural Economy
- Harnessing Technological Innovation
- Supporting a Rural Workforce
- Improving Quality of Life

Overview

Federal Agency Name: USDA Rural Business-Cooperative Service.

Funding Opportunity Title: Delta Health Care Services Grant Program.

Announcement Type: Initial Notice.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.874.

Dates: Application Deadline. You must submit your complete application by Midnight Eastern Time November 26, 2018, or it will not be considered for funding. Electronic copies must be received by *www.grants.gov* no later than Midnight Eastern Time November 19, 2018, or it will not be considered for funding.

Executive Order (E.O.) 13175 Consultation and Coordination With Indian Tribal Governments

This Executive Order imposes requirements on Rural Development in the development of regulatory policies that have tribal implications or preempt tribal laws. Rural Development has determined that this Notice does not have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and the Indian tribes. Thus, this Notice is not subject to the requirements of Executive Order 13175. Tribal Consultation inquiries and comments should be directed to RD's Native American Coordinator at *aian@wdc.usda.gov* or (720) 544–2911.

Paperwork Reduction Act

The Paperwork Reduction Act requires Federal agencies to seek and obtain Office of Management and Budget (OMB) approval before undertaking a collection of information directed to ten or more persons. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Agency conducted an analysis to determine the number of applications the Agency estimates that it will receive under the DHCS grant program. It was determined that the estimated number of applications was fewer than nine and in accordance with 5 CFR 1320, thus no OMB approval is necessary at this time.

A. Program Description

The DHCS program is authorized by Section 379G of the Consolidated Farm and Rural Development Act (7 U.S.C. 2008u), as amended by the Agricultural Act of 2014 (Pub. L. 113–79). The primary objective of the program is to provide financial assistance to address the continued unmet health needs in the Delta Region through cooperation among health care professionals, institutions of higher education, research institutions, and other individuals and entities in the Delta Region. Grants are awarded on a

competitive basis. The maximum award amount per grant is $1,000,000.

Definitions

The definitions you need to understand are as follows:

Academic Health and Research Institute—A combination of a medical school, one or more other health profession schools or educational training programs (such as allied health, dentistry, graduate studies, nursing, pharmacy, public health), and one or more owned or affiliated teaching hospitals or health systems; or a health care nonprofit organization or health system, including nonprofit medical and surgical hospitals, that conduct health related research exclusively for scientific or educational purposes.

Conflict of Interest—A situation in which a person or entity has competing personal, professional, or financial interests that make it difficult for the person or business to act impartially. Federal procurement standards prohibit transactions that involve a real or apparent conflict of interest for owners, employees, officers, agents, or their immediate family members having a financial or other interest in the outcome of the Project; or that restrict open and free competition for unrestrained trade. Specifically, Project Funds may not be used for services or goods going to, or coming from, a person or entity with a real or apparent conflict of interest, including, but not limited to, owner(s) and their immediate family members. An example of conflict of interest occurs when the consortium member's employees, board of directors, or the immediate family of either, have the appearance of a professional or personal financial interest in the recipients receiving the benefits or services of the grant.

Consortium—A group of three or more entities that are regional Institutions of Higher Education, Academic Health and Research Institutes, and/or Economic Development Entities located in the Delta Region that have at least 1 year of prior experience in addressing the health care issues in the region. At least one of the consortium members must be legally organized as an incorporated organization or other legal entity and have legal authority to contract with the Federal Government.

Delta Region—The 252 counties and parishes within the states of Alabama, Arkansas, Illinois, Kentucky, Louisiana, Mississippi, Missouri, and Tennessee that are served by the Delta Regional Authority. (The Delta Region may be adjusted by future Federal statute.) To view the areas identified within the Delta Region visit *http://dra.gov/about-dra/dra-states.*

Economic Development Entity—Any public or non-profit organization whose primary mission is to stimulate local and regional economies within the Delta Region by increasing employment opportunities and duration of employment, expanding or retaining existing employers, increasing labor rates or wage levels, reducing outmigration, and/or creating gains in other economic development-related variables such as land values. These activities shall primarily benefit low and moderate-income individuals in the Delta Region.

Health System—The complete network of agencies, facilities, and all providers of health care to meet the health needs of a specific geographical area or target populations.

Institution of Higher Education—A postsecondary (post-high school) educational institution that awards a bachelor's degree or provides not less than a 2-year program that is acceptable for full credit toward such a degree, or a postsecondary vocational institution that provides a program of training to prepare students for gainful employment in a recognized occupation.

Nonprofit Organization—An organization or institution, including an accredited institution of higher education, where no part of the net earnings of which may inure, to the benefit of any private shareholder or individual.

Project—All activities funded by the DHCS grant.

Project Funds—Grant funds requested plus any other contributions to the proposed Project.

Rural and rural area—Any area of a State:

- Not in a city or town that has a population of more than 50,000 inhabitants, according to the latest decennial census of the United States; and
- The contiguous and adjacent urbanized area,
- Urbanized areas that are rural in character as defined by 7 U.S.C. 1991(a)(13).
- For the purposes of this definition, cities and towns are incorporated population centers with definite boundaries, local self-government, and legal powers set forth in a charter granted by the State.

State—Includes each of the 50 States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and, as may be determined by the Secretary to be feasible, appropriate and lawful, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

B. Federal Award Information

Type of Award: Competitive Grant.
Total Funding: $3,558,000.
Maximum Award: $1,000,000.
Minimum Award: $50,000.
Project Period: Up to 24 months.
Anticipated Award Date: January 31, 2019.

C. Eligibility Information

Applicants must meet all of the following eligibility requirements. Your application will not be considered for funding if it does not provide sufficient information to determine eligibility or is missing required elements. Applicants that fail to submit the required elements by the application deadline will be deemed ineligible and will not be evaluated further. Information submitted after the application deadline will not be accepted.

1. Eligible Applicants

Grants funded through DHCS may be made to a Consortium as defined in Paragraph A of this Notice. Consortiums are eligible to receive funding through this Notice. One member of the Consortium must be designated as the lead entity by the other members of the Consortium and have legal authority to contract with the Federal Government.

The lead entity is the recipient (see 2 CFR 200.86) of the DHCS grant funds and accountable for monitoring and reporting on the Project performance and financial management of the grant. In addition, the lead entity (recipient) is responsible for subrecipient monitoring and management in accordance with 2 CFR 200.330 and 200.331, respectively. The remaining consortium members are subrecipients (see 2 CFR 200.93). They may receive subawards (see 2 CFR 200.94) from the recipient and are responsible for monitoring and reporting the Project performance and financial management of their subaward to the recipient.

(a) An applicant is ineligible if they do not submit ''Evidence of Eligibility'' and ''Consortium Agreements'' as described in Section D.2. of this Notice.

(b) An applicant is ineligible if they have been debarred or suspended or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, ''Debarment and Suspension.'' The Agency will check the System for Award Management (SAM) to determine if the applicant has been debarred or

suspended. In addition, an applicant will be considered ineligible for a grant due to an outstanding judgment obtained by the U.S. in a Federal Court (other than U.S. Tax Court), is delinquent on the payment of Federal income taxes, or is delinquent on Federal debt. The applicant must certify as part of the application that they do not have an outstanding judgment against them. The Agency will check the Credit Alert Interactive Voice Response System (CAIVRS) to verify this.

(c) Any corporation (1) that has been convicted of a felony criminal violation under any Federal law within the past 24 months or (2) that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, is not eligible for financial assistance provided with funds appropriated by the Consolidated Appropriations Act, 2018 (Pub. L. 115–141), unless a Federal agency has considered suspension or debarment of the corporation and has made a determination that this further action is not necessary to protect the interests of the Government.

(d) Applications will be deemed ineligible if the application includes any funding restrictions identified under Section D.6.

(e) Applications will be deemed ineligible if the application is not complete in accordance with the requirements stated in Section C.3.g.

2. Cost Sharing or Matching

Matching funds are not required. However, if you are adding any other contributions to the proposed Project, you must provide documentation indicating who will be providing the matching funds, the amount of funds, when those funds will be provided, and how the funds will be used in the Project budget. Examples of acceptable documentation include: A signed letter from the source of funds stating the amount of funds, when the funds will be provided, and what the funds can be used for or a signed resolution from your governing board authorizing the use of a specified amount of funds for specific components of the Project. The matching funds you identify must be for eligible purposes and included in your work plan and budget. Additionally, expected program income may not be used as matching funds at the time you submit your application. However, if you have a contract to provide services in place at the time you submit your application, you can verify the amount of the contract as matching funds. If you choose, you may use a template to summarize the matching funds. The template is available either from your State Office or the program website at: *http://www.rd.usda.gov/programs-services/delta-health-care-services-grants.*

3. Other Eligibility Requirements

(a) *Use of Funds.* Your application must propose to use Project Funds for eligible purposes. Eligible Project purposes include the development of:

- Health care services;
- health education programs;
- health care job training programs; and
- the development and expansion of public health-related facilities in the Delta Region.

(b) *Project Eligibility.* The proposed Project must take place within the Delta Region as defined in this Notice. However, the applicant need not propose to serve the entire Delta Region.

(c) *Project Input.* Your proposed Project must be developed based on input from local governments, public health care providers, and other entities in the Delta Region.

(d) *Grant Period Eligibility.* All awards are limited to up to a 24 month grant period based upon the complexity of the Project. Your proposed grant period should begin no earlier than February 1, 2019, and should end no later than 24 months following that date. If you receive an award, your grant period will be revised to begin on the actual date of award—the date the grant agreement is executed by the Agency—and your grant period end date will be adjusted accordingly. Your Project activities must begin within 90 days of the date of award. If you request funds for a time period beginning before February 1, 2019, and/or ending later than 24 months from that date, your application will be ineligible. The length of your grant period should be based on your Project's complexity, as indicated in your application work plan.

(e) *Multiple Application Eligibility.* The Consortium, including its members, is limited to submitting one application for funding under this Notice. We will not accept applications from Consortiums that include members who are also members of other Consortiums that have submitted applications for funding under this Notice. If we discover that a Consortium member is a member of multiple Consortiums with applications submitted for funding under this Notice, all applications will be considered ineligible for funding.

(f) *Satisfactory Performance Eligibility.* If you have an existing DHCS award, you must be performing satisfactorily to be considered eligible for a new DHCS award. Satisfactory performance includes being up-to-date on all financial and performance reports as prescribed in the grant award, and current on tasks and timeframes for utilizing grant and matching funds as approved in the work plan and budget. If you have any unspent grant funds on DHCS awards prior to FY 2016, your application will not be considered for funding. If your FY 2016 and/or 2017 award has unspent funds of 50 percent or more than what your approved work plan and budget projected at the time your FY 2018 application is evaluated, your application may not be considered for funding. The Agency will verify the performance status of FY 2016 and 2017 awards and make a determination after the FY 2018 application period closes.

(g) *Completeness Eligibility.* Your application must provide all of the information requested in Section D.2. of this Notice. Applications lacking sufficient information to determine eligibility and scoring will be deemed ineligible and will not be considered for scoring.

(h) *Indirect Costs.* Your negotiated indirect cost rate approval does not need to be included in your application, but you will be required to provide it if a grant is awarded. Approval for indirect costs that are requested in an application without an approved indirect cost rate agreement is at the discretion of the Agency.

D. Application and Submission Information

1. Address To Request Application Package

The application template for this funding opportunity is located at: *http://www.rd.usda.gov/programs-services/delta-health-care-services-grants.* Use of the application template is strongly recommended to assist you with the application process. You may also contact your State Office for more information. Contact information for State Offices is located at: *http://www.rd.usda.gov/contact-us/state-offices.* You may also obtain an application package by calling 202–690–1374.

2. Content and Form of Application Submission

You may submit your application in paper form or electronically through *Grants.gov.* Your application must contain all required information. If you submit in paper form, any forms

requiring signatures must include an original signature.

To apply electronically, you must follow the instructions for this funding announcement at: *http://www.grants.gov.* Please note that we cannot accept emailed or faxed applications.

You can locate the *Grants.gov* downloadable application package for this program by using a keyword, the program name, or the CFDA number for this program.

When you enter the *Grants.gov* website, you will find information about applying electronically through the site, as well as the hours of operation.

To use *Grants.gov,* you must already have a DUNS number and you must also be registered and maintain registration in SAM. We strongly recommend that you do not wait until the application deadline date to begin the application process through *Grants.gov.*

You must submit all of your application documents electronically through *Grants.gov.* Applications must include electronic signatures. Original signatures may be required if funds are awarded.

After applying electronically through *Grants.gov,* you will receive an automatic acknowledgement from *Grants.gov* that contains a *Grants.gov* tracking number.

If you want to submit a paper application, send it to the State Office located in the State where the Project will primarily take place. You can find State Office contact information at: *http://www.rd.usda.gov/contact-us/state-offices.*

The organization submitting the application will be considered the lead entity. The Contact/Program Manager must be associated with the lead entity submitting the application.

Your application must also contain the following required forms and proposal elements:

(a) *Form SF–424,* ''Application for Federal Assistance.'' The application for Federal assistance must be completed by the lead entity as described in Section C.1. of this Notice. Your application must include your DUNS number and SAM Commercial and Government Entity (CAGE) code and expiration date (or evidence that you have begun the SAM registration process). Because there are no specific fields for a CAGE code and expiration date, you may identify them anywhere you want to on the form. If you do not include the DUNS number in your application, it will not be considered for funding. The form must be signed by an authorized representative.

(b) *Form SF–424A,* ''Budget Information—Non-Construction Programs.'' This form must be completed and submitted as part of the application package for non-construction Projects.

(c) *Form SF–424B,* ''Assurances—Non-Construction Programs.'' This form must be completed, signed, and submitted as part of the application package for non-construction Projects.

(d) *Form SF–424C,* ''Budget Information—Construction Programs.'' This form must be completed, signed, and submitted as part of the application package for construction Projects.

(e) *Form SF–424D,* ''Assurances—Construction Programs.'' This form must be completed, signed, and submitted as part of the application package for construction Projects.

(f) *Form AD–3030.* Form AD–3030, ''Representations Regarding Felony Conviction and Tax Delinquent Status for Corporate Applicants,'' if you are a corporation. A corporation is any entity that has filed articles of incorporation in one of the 50 States, the District of Columbia, the Federated States of Micronesia, the Republic of Palau, and the Republic of the Marshall Islands, or the various territories of the United States including American Samoa, Guam, Midway Islands, the Commonwealth of the Northern Mariana Islands, Puerto Rico, or the U.S. Virgin Islands. Corporations include both for profit and non-profit entities.

(g) *Executive Summary.* You must provide a summary of the proposal, not to exceed one page, briefly describing the Project, tasks to be completed, and other relevant information that provides a general overview of the Project.

(h) *Evidence of Eligibility.* You must provide evidence of the Consortium's eligibility to apply under this Notice. This section must include a detailed summary demonstrating how each Consortium member meets the definition of an eligible entity as defined under Definitions of this Notice.

(i) *Consortium Agreements.* The application must include a formal written agreement with each Consortium member that addresses the negotiated arrangements for administering the Project to meet Project goals, the Consortium member's responsibilities to comply with administrative, financial, and reporting requirements of the grant, including those necessary to ensure compliance with all applicable Federal regulations and policies, and facilitate a smooth functioning collaborative venture. Under the agreement, each Consortium member must perform a substantive role in the Project and not merely serve as a conduit of funds to another party or parties. This agreement must be signed by an authorized representative of the lead entity and an authorized representative of each partnering consortium entity.

(j) *Scoring Criteria.* Each of the scoring criteria in this Notice must be addressed in narrative form. Failure to address each scoring criterion will result in the application being determined ineligible.

(k) *Performance Measures.* The Agency has also established annual performance measures to evaluate the DHCS program. You must provide estimates on the following performance measures as part of your application:

- Number of businesses assisted;
- Number of jobs created;
- Number of jobs saved;
- Number of individuals assisted/trained.

It is permissible to have a zero in a performance element. When you calculate jobs created, estimates should be based upon actual jobs to be created by your organization as a result of the DHCS funding or actual jobs to be created by businesses as a result of assistance from your organization. When you calculate jobs saved, estimates should be based only on actual jobs that would have been lost if your organization did not receive DHCS funding or actual jobs that would have been lost without assistance from your organization.

You can also suggest additional performance elements for example where job creation or jobs saved may not be a relevant indicator. These additional elements should be specific, measurable performance elements that could be included in an award document.

(l) *Financial Information and Sustainability.* You must provide current financial statements and a narrative description demonstrating sustainability of the Project, all of which show sufficient resources and expertise to undertake and complete the Project and how the Project will be sustained following completion. Applicants must provide 3 years of pro-forma financial statements for the Project.

(m) *Evidence of Legal Authority and Existence.* The lead entity must provide evidence of its legal existence and authority to enter into a grant agreement with the Agency and perform the activities proposed under the grant application.

(n) *Service Area Maps.* You must provide maps with sufficient detail to show the area that will benefit from the proposed facilities and services and the location of the facilities improved or

purchased with grant funds if applicable.

(o) *Certification of no current outstanding Federal judgment.* You must certify that there are no current outstanding Federal judgments against your property and that you will not use grant funds to pay for any judgment obtained by the United States. You must also certify that you are not delinquent on the payment of Federal income taxes, or any Federal debt. To satisfy the Certification requirement, you should include this statement in your application: ''[INSERT NAME OF APPLICANT] certifies that the United States has not obtained an unsatisfied judgment against its property, is not delinquent on the payment of Federal income taxes, or any Federal debt, and will not use grant funds to pay any judgments obtained by the United States.'' A separate signature is not required.

(p) *Environmental information necessary to support the Agency's environmental finding.* Required information can be found in 7 CFR part 1970, specifically in Subpart B, Exhibit C and Subpart C, Exhibit B. These documents can be found here: *http://www.rd.usda.gov/publications/regulations-guidelines/instructions.* Non-construction Projects applying under this Notice are hereby classified as Categorical Exclusions according to 7 CFR 1970.53(b), the award of financial assistance for planning purposes, management and feasibility studies, or environmental impact analyses, which do not require any additional documentation.

3. DUNS Number and SAM Registration

In order to be eligible (unless you are exempted under 2 CFR 25.110(b), (c) or (d), you are required to:

(a) Provide a valid DUNS number in your application, which can be obtained at no cost via a toll-free request line at (866) 705–5711;

(b) Register in SAM before submitting your application. You may register in SAM at no cost at: *https://www.sam.gov/portal/public/SAM/*; and

(c) Continue to maintain an active SAM registration with current information at all times during which you have an active Federal award or an application or plan under consideration by a Federal awarding agency.

The Agency may not make a Federal award to you until you have complied with all applicable DUNS and SAM requirements. If you have not fully complied with requirements by the time the Agency is ready to make a Federal award, the Agency may determine that the applicant is not qualified to receive a Federal award and the Agency may use this determination as a basis for making an award to another applicant.

4. Submission Date and Time

Application Deadline Date: November 26, 2018.

Explanation of Deadlines: Complete paper applications must be postmarked and mailed, shipped, or sent overnight by November 26, 2018. The Agency will determine whether your application is late based on the date shown on the postmark or shipping invoice. You may also hand carry your application to one of our field offices, but it must be received by close of business on the deadline date. If the due date falls on a Saturday, Sunday, or Federal holiday, the reporting package is due the next business day. Late applications are not eligible for funding.

Electronic applications must be RECEIVED by: *http://www.grants.gov* by midnight Eastern Time November 19, 2018, to be eligible for funding. Please review the *Grants.gov* website at: *http://grants.gov/applicants/organization_registration.jsp* for instructions on the process of registering your organization as soon as possible to ensure you can meet the electronic application deadline. *Grants.gov* will not accept applications submitted after the deadline.

5. Intergovernmental Review

Executive Order (E.O.) 12372, Intergovernmental Review of Federal Programs, applies to this program. This E.O. requires that Federal agencies provide opportunities for consultation on proposed assistance with State and local governments. Many States have established a Single Point of Contact (SPOC) to facilitate this consultation. For a list of States that maintain a SPOC, please see the White House website: *https://www.whitehouse.gov/wp-content/uploads/2017/11/SPOC-Feb.-2018.pdf.* If your State has a SPOC, you may submit your application directly for review. Any comments obtained through the SPOC must be provided to your State Office for consideration as part of your application. If your State has not established a SPOC or you do not want to submit your application to the SPOC, your State Office will submit your application to the SPOC or other appropriate agency or agencies.

You are also encouraged to contact Cooperative Programs at 202–690–1374 or *cpgrants@wdc.usda.gov* if you have questions about this process.

6. Funding Restrictions

Project Funds may not be used for ineligible purposes. In addition, you may not use Project Funds for the following:

(a) To duplicate current services or to replace or to substitute support previously provided. However, Project Funds may be used to expand the level of effort or a service beyond what is currently being provided;

(b) To pay for costs to prepare the application for funding under this Notice;

(c) To pay for costs of the Project incurred prior to the effective date of the period of performance;

(d) To pay expenses for applicant employee training not directly related to the Project;

(e) Fund political activities;

(f) To pay for assistance to any private business enterprise which does not have at least 51 percent ownership by those who are either citizens of the United States or reside in the United States after being legally admitted for permanent residence;

(g) To pay any judgment or debt owed to the United States;

(h) Engage in any activities that are considered a Conflict of Interest, as defined by this Notice; or

(i) Fund any activities prohibited by 2 CFR 200;

In addition, your application will not be considered for funding if it does any of the following:

i. Requests more than the maximum grant amount; or

ii. Proposes ineligible costs that equal more than 10 percent of the Project Funds.

We will consider your application for funding if it includes ineligible costs of 10 percent or less of total Project Funds, if it is determined eligible otherwise. However, if your application is successful, those ineligible costs must be removed and replaced with eligible costs before the Agency will make the grant award or the amount of the grant award will be reduced accordingly. If we cannot determine the percentage of ineligible costs, your application will not be considered for funding.

7. Other Submission Requirements

(a) You should not submit your application in more than one format. You must choose whether to submit your application in hard copy or electronically. Applications submitted in hard copy should be mailed or hand-delivered to the State Office where the Project will primarily take place. You can find State Office contact information at: *http://www.rd.usda.gov/contact-us/state-offices.* To apply electronically, you must follow the instructions for this funding announcement at: *http://*

www.grants.gov. A password is not required to access the website.

(b) National Environmental Policy Act. This Notice has been reviewed in accordance with 7 CFR part 1970, ''Environmental Policies and Procedures.'' We have determined that an Environmental Impact Statement is not required because the issuance of regulations and instructions, as well as amendments to them, describing administrative and financial procedures for processing, approving, and implementing the Agency's financial programs is categorically excluded in the Agency's National Environmental Policy Act regulation found at 7 CFR 1970.53(f), ''Environmental Policies and Procedures.'' We have determined that this Notice does not constitute a major Federal action significantly affecting the quality of the human environment.

The Agency will review each grant application to determine its compliance with 7 CFR part 1970. The applicant may be asked to provide additional information or documentation to assist the Agency with this determination.

(c) Civil Rights Compliance Requirements. All grants made under this Notice are subject to Title VI of the Civil Rights Act of 1964 as required by the USDA (7 CFR part 15, subpart A) and Section 504 of the Rehabilitation Act of 1973.

E. Application Review Information

The State Offices will review applications to determine if they are eligible for assistance based on requirements in this Notice, and other applicable Federal regulations. If determined eligible, your application will be scored by a panel of USDA employees in accordance with the point allocation specified in this Notice. Applications will be funded in rank order until the funding limitation has been reached. Applications that cannot be fully funded may be offered partial funding at the Agency's discretion.

1. Scoring Criteria

All eligible and complete applications will be evaluated based on the following criteria. Evaluators will base scores only on the information provided or cross-referenced by page number in each individual scoring criterion. DHCS is a competitive program, so you will receive scores based on the quality of your responses. Simply addressing the criteria will not guarantee higher scores. The total points possible for the criteria are 110. The minimum score requirement for funding is 60 points. It is at the Agency's discretion to fund applications with a score of 59 points or less if it is in the best interest of the Federal Government.

(a) *Community Needs and Benefits derived from the Project (maximum of 30 points).* A panel of USDA employees will assess how the Project will benefit the residents in the Delta Region. This criterion will be scored based on the documentation in support of the community needs for health services and public health-related facilities and the benefits to people living in the Delta Region derived from the implementation of the proposed Project. It should lead clearly to the identification of the Project participant pool and the target population for the Project and provide convincing links between the Project and the benefits to the community to address its health needs. The Agency will consider:

(1) The extent of the applicant's documentation explaining the health care needs, issues, and challenges facing the service area. Include what problems the residents face and how the Project will benefit the residents in the region.

(2) The extent to which the applicant is able to show the relationship between the Project's design, outcome, and benefits.

(3) The extent to which the applicant explains the Project and its implementation and provides milestones which are well-defined and can be realistically completed.

(4) The extent to which the applicant clearly outlines a plan to track, report, and evaluate performance outcomes.

Applicants should attempt to quantify benefits in terms of outcomes from the Project; that is, ways in which peoples' lives, or the community, will be improved. Provide estimates of the number of people affected by the benefits arising from the Project.

(b) *The Project Management and Organization Capability (maximum of 30 points).* A panel of USDA employees will evaluate the Consortium's experience, past performance, and accomplishments addressing health care issues to ensure effective Project implementation. This criterion will be scored based on the documentation of the Project's management and organizational capability. The Agency will consider:

(1) The degree to which the organization has a sound management and fiscal structure including: Well-defined roles for administrators, staff, and established financial management systems.

(2) The extent to which the applicant identifies and demonstrates that qualifications, capabilities, and educational background of the identified key personnel (at a minimum the Project Manager) who will manage and implement programs are relevant and will contribute to the success of the Project.

(3) The extent to which the applicant demonstrates current successful and effective experience (or demonstrated experience within the past 5 years) addressing the health care issues in the Delta Region.

(4) The extent to which the applicant has experience managing grant-funded programs.

(5) The extent to which administrative/management costs are balanced with funds designated for the provision of programs and services.

(6) The extent and diversity of eligible entity types within the applicant's Consortium of regional institutions of higher education, academic health and research institutes, and economic development entities located in the Delta Region.

(c) *Work Plan and Budget (maximum of 30 points).* You must provide a work plan and budget that includes the following: (1) The specific activities, such as programs, services, trainings, and/or construction-related activities for a facility to be performed under the Project; (2) the estimated line item costs associated with each activity, including grant funds and other necessary sources of funds; (3) the key personnel who will carry out each activity (including each Consortium member's role); and (4) the specific time frames for completion of each activity.

An eligible start and end date for the Project and for individual Project tasks must be clearly shown and may not exceed Agency specified timeframes for the grant period. You must show the source and use of both grant and other contributions for all tasks. Other contributions must be spent at a rate equal to, or in advance of, grant funds.

A panel of USDA employees will evaluate your work plan for detailed actions and an accompanying timetable for implementing the proposal. Clear and comprehensive work plans detailing all project goals, tasks, timelines, costs, and responsible personnel in a logical and realistic manner will result in a higher score.

(d) *Local Support (maximum 10 points).* A panel of USDA employees will evaluate your application for local support of the proposed Project. The application must include documentation detailing support solicited from local government, public health care providers, and other entities in the Delta Region. Evidence of support can include; but is not limited to surveys conducted amongst Delta Region residents and stakeholders, notes

from focus groups, or letters of support from local entities.

(e) *Administrator Discretionary Points (maximum of 10 points).* The Administrator may choose to award:

i. Up to 5 points for projects with a primary purpose of providing treatment and counseling services for opioid abuse. Applicants who want to be considered for discretionary points must discuss how their workplan and budget addresses opioid misuse in the Delta Region; and

ii. up to 5 points for projects that seek to help rural communities build robust and sustainable economies through strategic investment in infrastructure, partnerships and innovation. Eligible applicants who want to be considered for discretionary points must discuss how their workplan and budget supports one or more of the five following key strategies:

- Achieving e-Connectivity for Rural America;
- Improving Quality of Life;
- Supporting a Rural Workforce;
- Harnessing Technological Innovation; and
- Economic Development

2. Review and Selection Process

The State Offices will review applications to determine if they are eligible for assistance based on requirements in this Notice, and other applicable Federal regulations. If determined eligible, your application will be scored by a panel of USDA employees in accordance with the point allocation specified in this Notice. The review panel will convene to reach a consensus on the scores for each of the eligible applications. The Administrator may choose to award up to 10 Administrator discretionary points based on criterion (e) in section E.1. of this Notice. These points will be added to the cumulative score for a total possible score of 110. Applications will be funded in highest ranking order until the funding limitation has been reached. Applications that cannot be fully funded may be offered partial funding at the Agency's discretion. If your application is ranked and not funded, it will not be carried forward into the next competition.

F. Federal Award Administration Information

1. Federal Award Notices

If you are selected for funding, you will receive a signed notice of Federal award by postal mail, containing instructions on requirements necessary to proceed with execution and performance of the award.

If you are not selected for funding, you will be notified in writing via postal mail and informed of any review and appeal rights. Funding of successfully appealed applications will be limited to available FY 2018 funding.

2. Administrative and National Policy Requirements

Additional requirements that apply to grantees selected for this in program can be found in 2 CFR parts 25, 170, 180, 200, 400, 415, 417, 418, and 421; and 48 CFR 31.2, and successor regulations to these parts. All recipients of Federal financial assistance are required to report information about first-tier subawards and executive compensation (see 2 CFR part 170). You will be required to have the necessary processes and systems in place to comply with the Federal Funding Accountability and Transparency Act reporting requirements (see 2 CFR 170.200(b), unless you are exempt under 2 CFR 170.110(b)). These regulations may be obtained at: *http://www.gpoaccess.gov/cfr/index.html.*

The following additional requirements apply to grantees selected for this program:

- Agency approved Grant Agreement.
- Letter of Conditions.
- Form RD 1940–1, ''Request for Obligation of Funds.''
- Form RD 1942–46, ''Letter of Intent to Meet Conditions.''
- Form AD–1047, ''Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions.''
- Form AD–1048, ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions.''
- Form AD–1049, ''Certification Regarding a Drug-Free Workplace Requirement (Grants).''
- Form AD–3031, ''Assurance Regarding Felony Conviction or Tax Delinquent Status for Corporate Applicants.'' Must be signed by corporate applicants who receive an award under this Notice.
- Form RD 400–4, ''Assurance Agreement.''
- RD Instruction 1940–Q, Exhibit A–1, ''Certification for Contracts, Grants and Loans.''
- SF–LLL, ''Disclosure of Lobbying Activities'' if applicable.

3. Reporting

After grant approval and through grant completion, you will be required to provide the following:

a. A SF–425, ''Federal Financial Report,'' and a project performance report will be required on a semiannual basis (due 30 working days after end of the semiannual period). For the purposes of this grant, semiannual periods end on June 30 and December 31. The project performance reports shall include a comparison of actual accomplishments to the objectives established for that period;

b. Reasons why established objectives were not met, if applicable;

c. Reasons for any problems, delays, or adverse conditions, if any, which have affected or will affect attainment of overall project objectives, prevent meeting time schedules or objectives, or preclude the attainment of particular objectives during established time periods. This disclosure shall be accompanied by a statement of the action taken or planned to resolve the situation; and

d. Objectives and timetable established for the next reporting period.

e. Provide a final project and financial status report within 90 days after the expiration or termination of the grant.

f. Provide outcome project performance reports and final deliverables.

G. Agency Contacts

If you have questions about this Notice, please contact the State Office as identified in the **ADDRESSES** section of this Notice. You are also encouraged to visit the application website for application tools, including an application template. The website address is: *http://www.rd.usda.gov/programs-services/delta-health-care-services-grants.*

H. Other Information

Nondiscrimination Statement

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large

print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at: *http://www.ascr.usda.gov/complaint_filing_cust.html* and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by:

(1) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410;

(2) *Fax:* (202) 690–7442; or

(3) *Email: program.intake@usda.gov*.

Dated: August 16, 2018.

Bette B. Brand,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2018–18682 Filed 8–28–18; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the United States Department of Agriculture (USDA) Rural Utilities Service (RUS) invites comments on this information collection for which approval from the Office of Management and Budget (OMB) will be requested.

DATES: Comments on this notice must be received by October 29, 2018.

FOR FURTHER INFORMATION CONTACT: Michele Brooks, Team Lead, Rural Development Innovation Center—Regulatory Team, USDA, 1400 Independence Avenue SW, STOP 1522, Room 5162, South Building, Washington, DC 20250–1522. Telephone: (202) 690–1078. Email *michele.brooks@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for extension.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Michele Brooks, Team Lead, Rural Development Innovation Center—Regulatory Team, USDA, 1400 Independence Avenue SW, STOP 1522, Room 5162, South Building, Washington, DC 20250–1522. Telephone: (202) 690–1078. Email *michele.brooks@wdc.usda.gov.*

Title: 7 CFR part 1717, subpart Y, Settlement of Debt Owed by Electric Borrowers.

OMB Control Number: 0572–0116.

Type of Request: Extension of a currently approved information collection package.

Abstract: The Rural Utilities Service makes mortgage loans and loan guarantees to electric systems to provide and improve electric service in rural areas pursuant to the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*)(RE Act). This information collection requirement stems from passage of Public Law 104–127, on April 4, 1996, which amended section 331(b) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*) to extend to RUS the Secretary of Agriculture's authority to settle debts with respect to loans made or guaranteed by RUS. Only those electric borrowers that are unable to fully repay their debts to the Government and who apply to RUS for relief will be affected by this information collection. The collection will require only that information which is essential for determining: The need for debt settlement; the amount of relief that is needed; the amount of debt that can be repaid; the scheduling of debt repayment; and, the range of opportunities for enhancing the amount of debt that can be recovered. The information to be collected will be similar to that which any prudent lender would require to determine whether debt settlement is required and the amount of relief that is needed. Since the need for relief is expected to vary substantially from case to case, so will the required information collection.

Estimate of Burden: Public reporting for this collection of information is estimated to average 1,000 hours per response.

Respondents: Not-for-profit institutions and other businesses.

Estimated Number of Respondents: 1.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 1,000 hours.

Copies of this information collection can be obtained from Thomas P. Dickson, Program Development and Regulatory Analysis at (202) 690–4492.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: August 23, 2018.

Christopher A. McLean,

Acting Administrator, Rural Utilities Service.

[FR Doc. 2018–18717 Filed 8–28–18; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Correction: Notice of Public Meeting of the Ohio Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Correction; announcement of meeting.

SUMMARY: The Commission on Civil Rights published a document August 16, 2018, announcing an upcoming Ohio Advisory Committee meeting. The document contained an incorrect address to the meeting.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or 312–353–8311.

Correction

In the **Federal Register** of August 16, 2018, in FR Doc. 2018–17706, on page 40745 in the first column, delete the ''Address'' and replace it with Cleveland State University, Fenn Tower, 1983 E 24th Street, Room 303, Cleveland, OH 44115.

Dated: August 24, 2018.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2018–18750 Filed 8–28–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Economic Development Administration (EDA or Agency).

Title: Application for Investment Assistance.

OMB Control Number: 0610–0094.

Form Number(s): ED–900, ED–900A, ED–900B, ED–900C, ED–900D, ED–900E, ED–900F, ED–900P.

Type of Request: Regular submission; revision of a currently approved collection.

Number of Respondents: 1672.

Average Hours per Response: 13 hours, 28 minutes.

Burden Hours: 22,552.2.

Application type	Estimated number of responses	Average time estimate	Total hours
Proposal Submission for Non-Construction Applicants	448	4.8	2,150.4
Proposal Submission for Construction Applicants	263	4.2	1,104.6
Full Application Submission for Construction Applicants	99	43.0	4,257
Full Application Submission All Other EDA Programs	737	17.1	12,602.7
Full Application Submission for Non-Profit Applicants	125	19.5	2,437.5
TOTAL	1672		22,552.2

Needs and Uses: In order for EDA to evaluate whether proposed projects satisfy eligibility and programmatic requirements contained in EDA's authorizing legislation, the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. 3121 *et seq.*) (PWEDA), Section 27 of the Stevenson-Wydler Act, EDA's accompanying regulations codified in 13 CFR Chapter III, and the applicable Notice of Funding Opportunity (NOFO), EDA must collect specific data from its grant applicants. EDA is requesting to revise and extend the currently approved suite of ED–900 application forms.

Affected Public: Not-for-profit institutions; Federal government; State, local, or Tribal government; Business or other for-profit organizations.

Frequency: During application for an EDA award.

Respondent's Obligation: Mandatory.

This information collection request may be viewed at *reginfo.gov*. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or faxed to (202) 395–5806.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer.

[FR Doc. 2018–18633 Filed 8–28–18; 8:45 am]

BILLING CODE 3510–34–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Economic Development Administration (EDA or Agency).

Title: Requirements for Approved Construction Investments.

OMB Control Number: 0610–0096.

Form Number(s): None.

Type of Request: Regular submission (revision and extension of a currently approved information collection).

Number of Respondents: 3,500.

Average Hours per Response: 2 hours.

Burden Hours: 7,000 hours.

Type of submission	Number of submissions	Hours per submission	Total estimated hours
500 open construction grants	7 submissions/year	2	7,000 hours/year.

Needs and Uses: EDA may award assistance for construction projects through its Public Works and Economic Adjustment Assistance (EAA) Programs. Public Works Program investments help support the construction or rehabilitation of essential public infrastructure and facilities necessary to generate or retain private sector jobs and investments, attract private sector capital, and promote vibrant economic ecosystems, regional competitiveness, and innovation. The EAA Program provides a wide range of technical, planning, and infrastructure assistance in regions experiencing adverse economic changes that may occur suddenly or over time.

EDA is seeking an extension of the series of checklists and templates (formerly referred to as the ''bluebook'') that constitute EDA's post-approval construction tools and the Standard Terms and Conditions for Construction Projects. These checklists and templates, as well as any special conditions incorporated into the terms and conditions at the time of award, supplement the requirements that apply to EDA-funded construction projects.

Affected Public: Current recipients of EDA construction (Public Works or Economic Assistance Adjustment) awards, to include (1) cities or other political subdivisions of a state, including a special purpose unit of state

or local government engaged in economic or infrastructure development activities, or a consortium of political subdivisions; (2) states; (3) institutions of higher education or a consortium of institutions of higher education; (4) public or private non-profit organizations or associations; (5) District Organizations; and (6) Indian Tribes or a consortia of Indian Tribes.

Frequency: Some are one time only and others are periodic.

Respondent's Obligation: Mandatory.

This information collection request may be viewed at *reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer.

[FR Doc. 2018–18631 Filed 8–28–18; 8:45 am]

BILLING CODE 3510–34–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Economic Development Administration (EDA or Agency).

Title: Request to Amend an Investment Award and Project Service Maps.

OMB Control Number: 0610–0102.

Form Number(s): None.

Type of Request: Regular submission (extension of a currently approved information collection).

Number of Respondents: 632 (600 requests for amendments to construction awards, 30 requests for amendments to non-construction awards, 2 project service maps).

Average Hours per Response: 2 hours for an amendment to a construction award, 1 hour for an amendment to a non-construction award, 6 hours for a project service map.

Burden Hours: 1,242 hours.

Type of request	Number of requests	Estimated hours per request	Estimated burden hours
Requests for amendments to construction awards	600	2 hours/request preparation	1,200
Requests for amendment to non-construction awards	30	1 hour/request	30
Project service maps	2	6 hours/map	12
Total			1,242

Needs and Uses: A recipient must submit a written request to EDA to amend an investment award and provide such information and documentation as EDA deems necessary to determine the merit of altering the terms of an award (see 13 CFR 302.7(a)). EDA *may* require a recipient to submit a project service map and information from which to determine whether services are provided to all segments of the region being assisted (see 13 CFR 302.16(c)).

Affected Public: Current recipients of EDA construction (Public Works or Economic Adjustment) assistance, to include (1) cities or other political subdivisions of a state, including a special purpose unit of state or local government engaged in economic or infrastructure development activities, or a consortium of political subdivisions; (2) states; (3) institutions of higher education or a consortium of institutions of higher education; (4) public or private non-profit organizations or associations; (5) District Organizations; and (6) Indian Tribes or a consortia of Indian Tribes and (7) (for training, research, and technical assistance awards only) individuals and for-profit businesses.

Frequency: Periodically, as needed.

Respondent's Obligation: Mandatory.

This information collection request may be viewed at reginfo.gov. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or faxed to (202) 395–5806.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer.

[FR Doc. 2018–18634 Filed 8–28–18; 8:45 am]

BILLING CODE 3510–34–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Economic Development Administration (EDA or Agency).

Title: Comprehensive Economic Development Strategies.

OMB Control Number: 0610–0093.

Form Number(s): None.

Type of Request: Regular submission (extension of a currently approved information collection).

Number of Respondents: 527.

Average Hours per Response: 480 hours for the initial CEDS for a District organization or other planning organization funded by EDA; 160 hours for the CEDS revision required at least every 5 years from an EDA-funded District or other planning organization; 40 hours per applicant for EDA Public Works or Economic Adjustment Assistance with a project deemed by EDA to merit further consideration that is not located in an EDA-funded District.

Burden Hours: 31,640.

Type of response	Number of responses	Hours per response	Total estimated time (hours)
Initial CEDS	3	480 hours/initial CEDS	1,440
Revised CEDS	77	160 hours/revised CEDS	12,320

Type of response	Number of responses	Hours per response	Total estimated time (hours)
CEDS Updates/Performance Reports	385	40 hours/report	15,400
CEDS by applicants not in EDA-funded District	62	40 hours	2,480 hours.
Total			31,640

Needs and Uses: In order to effectively administer and monitor its economic development assistance programs, EDA collects certain information from applications for, and recipients of, EDA investment assistance. The collection of this information is required to ensure the recipient is complying with EDA's CEDS requirements. A CEDS is required for an eligible applicant to qualify for an EDA investment assistance under its Public Works, Economic Adjustment, and certain planning programs, and is a prerequisite for a region's designation by EDA as an Economic Development District (see 13 CFR 303, 305.2, and 307.2 of EDA's regulations).

A CEDS emerges from a continuing planning process developed and driven by a public sector planning organization by engaging a broad-based and diverse set of stakeholders to address the economic problems and potential of a region. The CEDS should include information about how and to what extent stakeholder input and support was solicited. Information on how the planning organization collaborated with its diverse set of stakeholders (including the public sector, private interests, non-profits, educational institutions, and community organizations) in the development of the CEDS should be included. In accordance with the regulations governing the CEDS (see 13 CFR 303.7), a CEDS must contain a summary background, a SWOT Analysis, Strategic Direction/Action Plan, and an Evaluation Framework. In addition, the CEDS must incorporate the concept of economic resilience (*i.e.,* the ability to avoid, withstand, and recover from economic shifts, natural disasters, etc.). EDA is not proposing any changes to the current information collection request.

Affected Public: Not-for-profit institutions; State, local or Tribal government; Business or other for-profit organizations.

Frequency: At least every 5 years, as explained above.

Respondent's Obligation: Mandatory.

This information collection request may be viewed at *reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or faxed to (202) 395–5806.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer.

[FR Doc. 2018–18635 Filed 8–28–18; 8:45 am]

BILLING CODE 3510–34–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Economic Development Administration (EDA or Agency).

Title: Property Management.

OMB Control Number: 0610–0103.

Form Number(s): None.

Type of Request: Regular submission; Extension of a currently approved information collection.

Number of Respondents: 150 (54 incidental use requests; 96 for requests to release EDA's Property interest).

Average Hours per Response: 2 hours and 45 minutes.

Burden Hours: 413.

Type of request	Number of requests (estimated)	Hours per request (estimated)	Total estimated burden hours
Incidental use request	54	2.75	148.5
Release request	96	2.75	264
Total			412.5

Needs and Uses: A recipient must request in writing EDA's approval to undertake an incidental use of property acquired or improved with EDA's investment assistance (see 13 CFR 314.3).

If a recipient wishes EDA to release its real property or tangible personal property interests before the expiration of the property's estimated useful life, the recipient must submit a written request to EDA and disclose to EDA the intended future use of the real property or the tangible personal property for which the release is requested (see 13 CFR 314.10). This collection of information allows EDA to determine whether to release its real property or tangible personal property interests.

Affected Public: Current recipients of EDA construction (Public Works or Economic Adjustment Assistance) awards, to include (1) cities or other political subdivisions of a state, including a special purpose unit of state or local government engaged in economic or infrastructure development activities, or a consortium of political subdivisions; (2) states; (3) institutions of higher education or a consortium of institutions of higher education; (4) public or private non-profit organizations or associations; (5) District Organizations; and (6) Indian Tribes or a consortia of Indian Tribes.

Frequency: Ad hoc submission (only when a recipient makes a request).

Respondent's Obligation: Mandatory.

This information collection request may be viewed at reginfo.gov. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or faxed to (202) 395–5806.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer.

[FR Doc. 2018–18632 Filed 8–28–18; 8:45 am]

BILLING CODE 3510–34–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Proposed Information Collection; Comment Request; Chemical Weapons Convention Provisions of the Export Administration Regulations

AGENCY: Bureau of Industry and Security.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before October 29, 2018.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, 1401 Constitution Avenue NW, Room 6616, Washington, DC 20230 (or via the internet at *docpra@doc.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Mark Crace, BIS ICB Liaison, (202) 482–8093 or at *mark.crace@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Chemical Weapons Convention (CWC) is a multilateral arms control treaty that seeks to achieve an international ban on chemical weapons (CW). The CWC prohibits, the use, development, production, acquisition, stockpiling, retention, and direct or indirect transfer of chemical weapons. This collection implements the following export provision of the treaty in the Export Administration Regulations:

Schedule 1 notification and report: Under Part VI of the CWC Verification Annex, the United States is required to notify the Organization for the Prohibition of Chemical Weapons (OPCW), the international organization created to implement the CWC, at least 30 days before any transfer (export/import) of Schedule 1 chemicals to another State Party. The United States is also required to submit annual reports to the OPCW on all transfers of Schedule 1 Chemicals.

Schedule 3 End-Use Certificates: Under Part VIII of the CWC Verification Annex, the United States is required to obtain End-Use Certificates for exports of Schedule 3 chemicals to States that are not Party to the CWC to ensure the exported chemicals are only used for the purposes not prohibited under the Convention.

II. Method of Collection

Submitted electronically or on paper.

III. Data

OMB Control Number: 0694–0117.

Form Number(s): Not applicable.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 70.

Estimated Time per Response: 36 minutes.

Estimated Total Annual Burden Hours: 42 hours.

Estimated Total Annual Cost to Public: $0.

Legal Authority: CWC Implementation Act (Pub. L. 105–277, Division I), Executive Order 13128, DOC's CWC Regulation (15 CFR 710, *et seq.*)

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer.

[FR Doc. 2018–18636 Filed 8–28–18; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 14–4A004]

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Amended Export Trade Certificate of Review to DFA of California, Application No. 14–4A004.

SUMMARY: The U.S. Department of Commerce issued an amended Export Trade Certificate of Review to DFA of California (''DFA'') on August 21, 2018.

FOR FURTHER INFORMATION CONTACT: Joseph Flynn, Director, Office of Trade and Economic Analysis, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number) or email at *etca@trade.gov*.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (2018). The U.S. Department of Commerce, International Trade Administration, Office of Trade and Economic Analysis (''OTEA'') is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Secretary of Commerce to publish a summary of the issuance in the **Federal Register**. Under Section 305(a) of the Export Trading Company Act (15 U.S.C. 4012(b)(1)) and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the grounds that the determination is erroneous.

Description of Certified Conduct

DFA's Export Trade Certificate of Review has been amended to:

1. Add the following new Member of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)): John B. SanFilippo & Son, Inc.

DFA's amendment of its Export Trade Certificate of Review results in the following membership list:

1. Alpine Pacific Nut Company, Hughson, CA
2. Andersen & Sons Shelling, Vina, CA
3. Avanti Nut Company, Inc., Stockton, CA
4. Berberian Nut Company, LLC, Chico, CA
5. Carriere Family Farms, Inc., Glenn, CA
6. California Almond Packers and Exporters, Inc. (CAPEX), Corning CA
7. California Walnut Company, Inc., Los Molinos, CA
8. Chico Nut Company, Chico, CA
9. Continente Nut LLC, Oakley, CA
10. C. R. Crain & Sons, Inc., Los Molinos, CA
11. Crain Walnut Shelling, Inc., Los Molinos, CA
12. Diamond Foods, LLC, Stockton, CA
13. Empire Nut Company, Colusa, CA
14. Fig Garden Packing, Inc., Fresno, CA
15. Gold River Orchards, Inc., Escalon, CA
16. Grower Direct Nut Company, Hughson, CA
17. Guerra Nut Shelling Company, Hollister, CA
18. Hill View Packing Company Inc., Gustine, CA
19. John B. SanFilippo & Son, Inc.
20. Mariani Nut Company, Winters, CA
21. Mariani Packing Company, Inc., Vacaville, CA
22. Mid Valley Nut Company Inc., Hughson, CA
23. Morada Nut Company, LP, Stockton, CA
24. National Raisin Company, Fowler, CA
25. O–G Nut Company, Stockton, CA
26. Omega Walnut, Inc., Orland, CA
27. Pearl Crop, Inc., Stockton, CA
28. Poindexter Nut Company, Selma, CA
29. Prima Noce Packing, Linden, CA
30. RPC Packing Inc., Porterville, CA
31. Sacramento Packing, Inc., Yuba City, CA
32. Sacramento Valley Walnut Growers, Inc., Yuba City, CA
33. San Joaquin Figs, Inc., Fresno, CA
34. Shoei Foods USA Inc., Olivehurst, CA
35. Stapleton-Spence Packing, Gridley, CA
36. Sun-Maid Growers of California, Kingsburg, CA
37. Sunsweet Growers Inc., Yuba City, CA
38. Taylor Brothers Farms, Inc., Yuba City, CA
39. T.M. Duche Nut Company, Inc., Orland, CA
40. Wilbur Packing Company, Inc., Live Oak, CA
41. Valley Fig Growers, Fresno, CA

Dated: August 22, 2018.

Joseph Flynn,

Office of Trade and Economic Analysis, International Trade Administration.

[FR Doc. 2018–18686 Filed 8–28–18; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No.: 180806732–8732–01]

Trade Fair Certification (TFC) Program: Notice of Change of Application Deadline and Mailing Address

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of change of application deadline and mailing address.

SUMMARY: The United States Department of Commerce, International Trade Administration, is updating the Trade Fair Certification (TFC) program established under 22 U.S.C. 2455(f) to revise the application mailing address and the deadline for application submission for the Program. The updated TFC program guidelines can be found at: *https://2016.export.gov/tradefairs/eg_main_018560.asp*.

DATES: Applicable on August 29, 2018.

ADDRESSES: Applications for TFC consideration should be mailed via preferred courier method to: Vidya Desai, Trade Fair Certification, 1401 Constitution Avenue NW, Mailstop 52024, Washington, DC 20230, Phone: 202–482–2311.

To ensure timely delivery of your application, please also email your application to: *TFC@trade.gov*.

FOR FURTHER INFORMATION CONTACT: Vidya Desai, Senior Advisor, Trade Events, Office of Trade Promotion Programs, U.S. Department of Commerce, *TFC@trade.gov*.

SUPPLEMENTARY INFORMATION:

New Mailing Address: The Office of Trade Promotion Programs, which administers the TFC program for the U.S. Department of Commerce, has moved its physical office location from the Ronald Reagan Building to the main Herbert C. Hoover Commerce Building located at 1401 Constitution Ave. NW. This change is reflected on the website at: *https://2016.export.gov/tradefairs/eg_main_018561.asp*.

Revised Application Deadline: The TFC program is revising the deadline for applying for certification from 270 days prior to the start date of the show to 180 days prior to the start date of the trade show for which the application is being submitted. In addition, should applications not be received at least 180 days prior to the start date of the show, the TFC program will allow for a grace period of 5 business days to receive the application.

This change is reflected on the website at: *https://2016.export.gov/tradefairs/eg_main_018559.asp* and *https://2016.export.gov/tradefairs/eg_main_018559.asp*.

William Ross,

Supervisory International Trade Specialist/Team Leader, Office of Trade Promotion Programs.

[FR Doc. 2018–18617 Filed 8–28–18; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–970]

Multilayered Wood Flooring From the People's Republic of China: Amendment to Notice of Court Decision Not in Harmony With the Second Amended Final Determination and Amendment to Notice of Third Amended Final Determination of the Antidumping Duty Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On August 15, 2018, the United States Court of International Trade (CIT or Court) amended its July 3, 2018, final judgment in *Changzhou Hawd Flooring Co., et al.* v. *United States,* which sustained, in part, the final results of remand redetermination pursuant to court order by the Department of Commerce (Commerce) pertaining to the less-than-fair-value (LTFV) investigation on multilayered wood flooring (MLWF) from the People's Republic of China (China). On July 25, 2018, Commerce notified the public that the CIT's July 3, 2018, final judgment in the case was not in harmony with Commerce's final determination in the LTFV investigation of MLWF from China, and, pursuant to the CIT's July 3, 2018, final judgment, Commerce issued an amended final determination excluding Dunhua City Jisen Wood Industry Co., Ltd. (Dunhua City Jisen), Fine Furniture (Shanghai) Limited (Fine Furniture), and Armstrong Wood Products (Kunshan) Co., Ltd. (Armstrong Wood) from the antidumping duty (AD) order. Pursuant to the CIT's August 15, 2018, amendment to its July 3, 2018, final

judgment, we are excluding Double F Limited from the AD order.

DATES: Applicable July 13, 2018.

FOR FURTHER INFORMATION CONTACT: Aleksandras Nakutis, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3147.

SUPPLEMENTARY INFORMATION:

Background

As explained in further detail in the *Notice of Court Decision and Notice of Third Amended Final Determination,*[1] on July 3, 2018, the CIT sustained, in part, Commerce's fifth remand redetermination.[2] In particular, the CIT sustained Commerce's determination not to terminate the AD order [3] because the order was imposed, in part, based on indirect evidence of dumping by the China-wide entity, a finding which was not challenged.[4] With respect to the separate rate plaintiffs, the CIT ordered exclusion from the order for three separate respondents that sought voluntary examination in the investigation, but were denied: Dunhua City Jisen, Fine Furniture, and Armstrong Wood. The CIT held that Commerce's application of the exclusion regulation, 19 CFR 351.204(e)(1), was arbitrary with respect to these respondents.[5] The CIT sustained Commerce's determination not to exclude the remaining separate rate plaintiffs that did not seek voluntary examination in the investigation.[6]

Pursuant to the CIT's July 3, 2018, final judgment, on July 25, 2018, Commerce issued the *Notice of Court Decision and Notice of Third Amended Final Determination,* which explained that the CIT's July 3, 2018, final judgment was a final decision of that court that is not in harmony with the *Second Amended Final Determination,* and excluded Dunhua City Jisen, Fine Furniture, and Armstrong Wood from the AD order.[7]

On August 15, 2018, in response to an unopposed motion filed by Fine Furniture, the CIT amended its July 3, 2018, final judgment, and ordered the exclusion of Fine Furniture's affiliate, Double F Limited, a party previously collapsed with Fine Furniture into a single entity,[8] from the AD order.[9] This notice is published in accordance with the CIT's August 15, 2018, order, and amends Commerce's July 25, 2018, *Notice of Court Decision and Notice of Third Amended Final Determination* to exclude Double F Limited, along with Fine Furniture, Donghua City Jisen, and Armstrong Wood.

Amendment to Timken Notice

In its decision in *Timken,*[10] as clarified by *Diamond Sawblades,*[11] the United States Court for the Federal Circuit (CAFC) held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of a court decision that is not ''in harmony'' with Commerce's determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's August 15, 2018, amendment to its July 3, 2018, final judgment ordering the exclusion of Double F Limited constitutes a final decision of that court that is not in harmony with the *Second Amended Final Determination.* This notice is published in fulfillment of the publication requirements of *Timken.*

Amendment to Third Amended Final Determination

Pursuant to the CIT's August 15, 2018, order, we are amending the *Notice of Court Decision and Notice of Third Amended Final Determination* to exclude Double F Limited from the AD order. Section 735(c)(2)(A)–(B) of the Act instructs Commerce to terminate suspension of liquidation and to release any bond or other security, and refund any cash deposit, in the event of a negative determination. Here, suspension of liquidation must continue during the pendency of the appeals process (in accordance with *Timken* and as discussed above), and, therefore, we will continue to instruct U.S. Customs and Border Protection (CBP) at this time to (A) continue suspension at a cash deposit rate of zero percent until instructed otherwise; and (B) release any bond or other security, and refund any cash deposit made pursuant to the order by Double F Limited. In the event that the CIT's ruling is not appealed, or appealed and upheld by the CAFC, Commerce will instruct CBP to terminate the suspension of liquidation and to liquidate those unliquidated entries of subject merchandise without regard to antidumping duties.

This notice is issued and published in accordance with sections 516A(e)(1), 735, and 777(i)(1) of the Act.

Dated: August 24, 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. 2018–18725 Filed 8–28–18; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Multilayered Wood Flooring from the People's Republic of China: Final Determination of Sales at Less Than Fair Value: Notice of Court Decision Not in Harmony with the Second Amended Final Determination and Notice of Third Amended Final Determination of the Antidumping Duty Investigation,* 83 FR 35217 (July 25, 2018) (*Notice of Court Decision and Notice of Third Amended Final Determination*). *See also Baroque Timber Indus. (Zhongshan) Co.* v. *United States,* 971 F. Supp. 2d 1333, 1336 (Ct. Int'l Trade 2014); *Final Results of Redetermination Pursuant to Court Order, Baroque Timber Industries (Zhongshan) Company, Limited, et al.* v. *United States,* dated November 14, 2013 (First Remand Redetermination); *Final Results of Redetermination Pursuant to Court Order, Baroque Timber Industries (Zhongshan) Company, Limited, et al.* v. *United States,* dated May 30, 2014 (Second Remand Redetermination); *Changzhou Hawd Flooring Co.* v. *United States,* 77 F. Supp. 3d 1351 (Ct. Int'l Trade 2015); *Changzhou Hawd Flooring Co.* v. *United States,* 848 F.3d 1006, 1008 (Fed. Cir. 2017); *Final Results of Redetermination Pursuant to Court Order, Changzhou Hawd Flooring Co., Ltd., et al.* v. *United States,* dated October 16, 2014 (Third Remand Redetermination); *Final Results of Redetermination Pursuant to Court Order, Changzhou Hawd Flooring Co., Ltd., et al.* v. *United States,* dated March 24, 2015 (Fourth Remand Redetermination); *Final Results of Redetermination Pursuant to Court Order, Court No. 12–00020,* dated February 25, 2017 (Fifth Remand Redetermination).

[2] *See Changzhou Hawd Flooring Co., et al.* v. *United States,* Ct. No. 12–20, Slip Op. 18–82 (Ct. Int'l Trade July 3, 2018).

[3] *See Multilayered Wood Flooring from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order,* 76 FR 76690 (December 8, 2011) (*First Amended Final Determination and Order*).

[4] *See* Slip Op. 18–82 at 11–12.

[5] *Id.* at 16.

[6] *Id.* at 15–16.

[7] *See Notice of Court Decision and Notice of Third Amended Final Determination,* 83 FR at 35219.

[8] *See Multilayered Wood Flooring from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011–2012,* 79 FR 26712 (May 9, 2014); unchanged in *Multilayered Wood Flooring from the People's Republic of China: Amended Final Results of Antidumping Duty Review; 2011–2012,* 79 FR 35314 (June 20, 2014).

[9] *See Changzhou Hawd Flooring Co., et al.* v. *United States,* Ct. No. 12–20, Dkt. No. 199 (Ct. Int'l Trade Aug. 15 2018).

[10] *See Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

[11] *See Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Science Advisory Board; Solicitation for Members of the NOAA Science Advisory Board

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Office of Oceanic and Atmospheric Research (OAR), Department of Commerce (DOC).

ACTION: Notice of solicitation for members of the NOAA Science Advisory Board.

SUMMARY: NOAA is soliciting nominations for members of the NOAA Science Advisory Board (SAB). The SAB is the only Federal Advisory Committee with the responsibility to advise the Under Secretary of Commerce for Oceans, Atmosphere, and NOAA Administrator on long- and short-range strategies for research, education, and application of science to resource management and environmental assessment and prediction. The SAB consists of approximately fifteen members reflecting the full breadth of NOAA's areas of responsibility and assists NOAA in maintaining a complete and accurate understanding of scientific issues critical to the agency's missions.

DATES: Nominations should be sent to the web address specified below and must be received by October 15, 2018.

ADDRESSES: Applications should be submitted electronically to *noaa.sab.newmembers@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Cynthia Decker, Executive Director, Science Advisory Board, NOAA, Rm. 11230, 1315 East-West Highway, Silver Spring, Maryland 20910. (Phone: 301–734–1156, Fax: 301–713–1459, Email: *Cynthia.Decker@noaa.gov*); or visit the NOAA SAB website at *http://www.sab.noaa.gov.*

SUPPLEMENTARY INFORMATION: At this time, individuals are sought with expertise in cloud computing, artificial intelligence and data management; weather modeling and data assimilation; remote/autonomous sensing technology; ocean exploration science and technology; and 'omics science. Individuals with expertise in other NOAA mission areas are also welcome to apply.

Composition and Points of View: The Board will consist of approximately fifteen members, including a Chair, designated by the Under Secretary in accordance with FACA requirements.

Members will be appointed for three-year terms, renewable once, and serve at the discretion of the Under Secretary. If a member resigns before the end of his or her first term, the vacancy appointment shall be for the remainder of the unexpired term, and shall be renewable twice if the unexpired term is less than one year. Members will be appointed as special government employees (SGEs) and will be subject to the ethical standards applicable to SGEs. Members are reimbursed for actual and reasonable travel and per diem expenses incurred in performing such duties but will not be reimbursed for their time. As a Federal Advisory Committee, the Board's membership is required to be balanced in terms of viewpoints represented and the functions to be performed as well as the interests of geographic regions of the country and the diverse sectors of U.S. society.

The SAB meets in person three times each year, exclusive of teleconferences or subcommittee, task force, and working group meetings. Board members must be willing to serve as liaisons to SAB working groups and/or participate in periodic reviews of the NOAA Cooperative Institutes and overarching reviews of NOAA's research enterprise.

Nominations: Interested persons may nominate themselves or third parties.

Applications: An application is required to be considered for Board membership, regardless of whether a person is nominated by a third party or self-nominated. The application package must include: (1) The nominee's full name, title, institutional affiliation, and contact information; (2) the nominee's area(s) of expertise; (3) a short description of his/her qualifications relative to the kinds of advice being solicited by NOAA in this Notice; and (4) a current resume (maximum length four [4] pages).

Dated: August 23, 2018.

David Holst,

Chief Financial Officer/Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2018–18663 Filed 8–28–18; 8:45 am]

BILLING CODE 3510–KD–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No. PTO–C–2018–0049]

Performance Review Board (PRB)

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: In conformance with the Civil Service Reform Act of 1978, the United States Patent and Trademark Office announces the appointment of persons to serve as members of its Performance Review Board.

ADDRESSES: Director, Human Capital Management, Office of Human Resources, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

FOR FURTHER INFORMATION CONTACT: Anne T. Mendez at (571) 272–6173.

SUPPLEMENTARY INFORMATION: The membership of the United States Patent and Trademark Office Performance Review Board is as follows:

Anthony P. Scardino, Chair, Acting Deputy Under Secretary of Commerce for Intellectual Property and Acting Deputy Director of the United States Patent and Trademark Office

Frederick W. Steckler, Vice Chair, Chief Administrative Officer, United States Patent and Trademark Office

Andrew H. Hirshfeld, Commissioner for Patents, United States Patent and Trademark Office

Mary Boney Denison, Commissioner for Trademarks, United States Patent and Trademark Office

Sean M. Mildrew, Acting Chief Financial Officer, United States Patent and Trademark Office

David Chiles, Acting Chief Information Officer, United States Patent and Trademark Office

Sarah T. Harris, General Counsel, United States Patent and Trademark Office

Shira Perlmutter, Chief Policy Officer and Director for International Affairs, United States Patent and Trademark Office

Alternates

Meryl L. Hershkowitz, Deputy Commissioner for Trademark Operations, United States Patent and Trademark Office

Andrew I. Faile, Deputy Commissioner for Patent Operations, United States Patent and Trademark Office

Dated: August 21, 2018.

Andrei Iancu,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2018–18703 Filed 8–28–18; 8:45 am]

BILLING CODE 3510–18–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (''PRA''), 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 collection and its expected costs and burden.

DATES: Comments must be submitted on or before September 28, 2018.

ADDRESSES: Comments regarding the burden estimate or any other aspect of the information collection, including suggestions for reducing the burden, may be submitted directly to the Office of Information and Regulatory Affairs (''OIRA'') in OMB, within 30 days of the publication of this notice, by either of the following methods. Please identify the comments by ''OMB Control No 3038–0021.''

- *By email addressed to: OIRAsubmissions@omb.eop.gov* or
- *By mail addressed to:* The Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Commodity Futures Trading Commission, 725 17th Street NW, Washington, DC 20503.

A copy of all comments submitted to OIRA should be sent to the Commodity Futures Trading Commission (CFTC or Commission) by any of the following methods. The copies sent to the Commission also should refer to ''OMB Control No. 3038–0021.''

- *By mail addressed to:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581;
- By Hand Delivery/Courier to the same address; or
- Through the Commission's website at *http://comments.cftc.gov.* Please follow the instructions for submitting comments through the website.

A copy of the supporting statement for the collection of information discussed herein may be obtained by visiting *http://RegInfo.gov.*

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1] The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the ICR will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Jocelyn Partridge, Special Counsel, Division of Clearing and Risk, Commodity Futures Trading Commission, (202) 418–5926; email: *jpartridge@cftc.gov.*

SUPPLEMENTARY INFORMATION:

Title: Regulations Governing Bankruptcies of Commodity Brokers (OMB Control No. 3038–0021). This is a request for an extension of a currently approved information collection.[2]

Abstract: This collection of information involves the reporting, recordkeeping, and third party disclosure requirements set forth in the CFTC's bankruptcy regulations for commodity broker liquidations, 17 CFR part 190.[3] These regulations apply to commodity broker liquidations under Chapter 7, Subchapter IV of the Bankruptcy Code.[4]

The reporting requirements include, for example, notices to the Commission regarding the filing of petitions for bankruptcy and notices to the Commission regarding the intention to transfer open commodity contracts in a commodity broker liquidation. The recordkeeping requirements include, for example, the statements of customer accounts that a trustee appointed for the purposes of a commodity broker liquidation (Trustee) must generate and adjust as set forth in the regulations. The third party disclosure requirements include, for example, the disclosure statement that a commodity broker must provide to its customers containing information regarding the manner in which customer property is treated under Part 190 of the Commission's regulations in the event of a bankruptcy and, in the event of a commodity broker liquidation, certain notices that a Trustee must provide to customers and to the persons to whom commodity contracts and specifically identifiable customer property have been or will be transferred. The information collection requirements are necessary, and will be used, to facilitate the effective, efficient, and fair conduct of liquidation proceedings for commodity brokers and to protect the interests of customers in these proceedings both directly and by facilitating the participation of the CFTC in such proceedings.

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 number. On June 25, 2018, the Commission published in the **Federal Register** notice of the proposed extension of this information collection and provided 60 days for public comment on the proposed extension, 83 FR 29547, June 25, 2018 (''60-Day Notice''). The Commission did not receive any relevant comments. Accordingly, it did not alter the burden estimates set forth in the 60-Day Notice in response to comments received.[5]

Burden Statement: The Commission notes that commodity broker liquidations occur at unpredictable and irregular intervals when particular commodity brokers become insolvent. While a commodity broker liquidation has not occurred in the past three years, the Commission took the conservative approach of maintaining the assumption contained in the previous renewal of this information collection that, on average, a commodity broker liquidation would occur every three years. The Commission generally has retained the burden hour estimates set forth in the previous information collection as there have been no interim experiences that would warrant altering those estimates.[6]

[1] 17 CFR 145.9.

[2] There are two information collections now associated with OMB Control No. 3038–0021. The first includes the reporting, recordkeeping, and third party disclosure requirements applicable to a single respondent in a commodity broker liquidation (*e.g.,* a single commodity broker or a single trustee) within the relevant time period that are provided for in Commission regulations 190.02(a)(1), 190.02(a)(2), 190.02(b)(1), 190.02(b)(2),190.02(b)(4), 190.02(c), 190.03(a)(1), 190.03(a)(2), 190.04(b) and 190.06(b). The second information collection includes the third party disclosure requirements provided for in Commission regulations 190.06(d) and 190.10(c) which are applicable on a regular basis to multiple respondents (*i.e.,* multiple futures commission merchants).

[3] These include the requirements contained in Commission regulations 190.02(a)(1), 190.02(a)(2), 190.02(b)(1), 190.02(b)(2),190.02(b)(4), 190.02(c), 190.03(a)(1), 190.03(a)(2), 190.04(b), 190.06(b), 190.06(d), and 190.10(c).

[4] 11 U.S.C. 761 *et seq.*

[5] As noted below, the Commission reduced the burden hours associated with the third party disclosures applicable to multiple respondents because the required documents are standardized and unchanged from the prior renewal. Accordingly, the time that the average respondent would spend drafting and sending the notice and disclosure is minimal. *See infra* fn.6.

[6] The Commission has retained the burden hour estimates for the applicable regulations with two limited exceptions. First, the Commission no longer assigns burden hours to the discretionary notice that a Trustee may provide to customers in an involuntary commodity broker liquidation pursuant to Commission regulation 190.02(b)(3). There have

The Commission further notes, however, that the information collection burden will vary in particular commodity broker liquidations depending on the size of the commodity broker, the extent to which accounts are able to be quickly transferred, and other factors specific to the circumstances of the liquidation.

The respondent burden for this information collection is estimated to be as follows: [7]

- Reporting: [8]

Estimated Number of Respondents: 1.

Estimated Annual Number of Responses per Respondent: 1.33.

Estimated Total Annual Number of Responses: 1.33.

Estimated Annual Number of Burden Hours per Respondent: 1.33.

Estimated Total Annual Burden Hours: 1.33.

Type of Respondents: Commodity brokers, Trustees, and self-regulatory organizations.

Frequency of Collection: On occasion.

- Recordkeeping: [9]

Estimated Number of Respondents: 1.

Estimated Annual Number of Responses per Respondent: 26,666.67.

Estimated Total Annual Number of Responses: 26,666.67.

Estimated Annual Number of Burden Hours per Respondent: 333.33.

Estimated Total Annual Burden Hours: 333.33.

Type of Respondents: Trustees.

Frequency of Collection: Daily and on occasion.

- Third Party Disclosures Applicable to a Single Respondent: [10]

Estimated Number of Respondents: 1.

Estimated Annual Number of Responses per Respondent: 6,671.32.

Estimated Total Annual Number of Responses: 6,671.32.

Estimated Annual Number of Burden Hours per Respondent: 1,034.63.

Estimated Total Annual Burden Hours: 1,034.63.

Type of Respondents: Trustees.

Frequency of Collection: On occasion.

- Third Party Disclosures Applicable to Multiple Respondents: [11]

Estimated Number of Respondents: 125.

Estimated Annual Number of Responses per Respondent: 2,000.

Estimated Total Annual Number of Responses: 250,000.

Estimated Annual Number of Burden Hours per Respondent: 40.

Estimated Total Annual Burden Hours: 2,500.

Type of Respondents: Futures commission merchants.

Frequency of Collection: On occasion.

There are no new capital or start-up or operations costs associated with this information collection, nor are there any maintenance costs associated with this information collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: August 24, 2018.

Christopher Kirkpatrick,

Secretary of the Commission.

[FR Doc. 2018–18742 Filed 8–28–18; 8:45 am]

BILLING CODE 6351–01–P

been no involuntary commodity broker liquidations and none are anticipated. Accordingly, continuing to assign burden hours to this voluntary requirement would inappropriately inflate the burden hours of this information collection. Second, the Commission has reduced the burden hours assigned to the third party disclosure requirements that are applicable to multiple respondents (as set forth in Commission regulations 190.06(d) and 190.10(c)). The notice and disclosure required by these regulations, respectively, are standardized and unchanged from the prior renewal. Accordingly, the time that the average respondent would spend drafting and sending the notice and disclosure is minimal.

[7] Because a commodity broker liquidation is estimated to occur only once every three years, the previous information collection, in many cases, expressed the burden of the reporting, recordkeeping, and third party disclosure requirements in terms of the burden applicable to ''.33'' respondents. For clarity, this notice expresses such burdens in terms of those that would be imposed on *one* respondent during the three year period. While the applicable burden is expressed in a different way, as noted above, the burden hours generally remain unchanged.

[8] The reporting requirements are contained in Commission regulations 190.02(a)(1), 190.02(a)(2), and 190.06(b).

[9] The recordkeeping requirements are contained in Commission regulations 190.03(a)(1), 190.03(a)(2), and 190.04(b).

[10] These third party disclosure requirements are contained in Commission regulations 190.02(b)(1), 190.02(b)(2), 190.02(b)(4), and 190.02(c).

[11] *See* fn. 1. The Commission is setting forth a new information collection under OMB Control No. 3038–0021 to separately account for the third party disclosure requirements provided for in Commission regulations 190.06(d) and 190.06(c) that are applicable on a regular basis to multiple respondents (*i.e.,* multiple futures commission merchants).

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Privacy Act of 1974; Matching Program

AGENCY: Corporation for National and Community Service.

ACTION: Notice of computer matching program between the Corporation for National and Community Service and the Social Security Administration.

SUMMARY: In accordance with the Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988, OMB Final Guidance Interpreting the Provisions of the Computer Matching and Privacy Protection Act of 1988, and the Serve America Act, the Corporation for National and Community Service (CNCS) is issuing public notice of its renewal of its computer matching agreement with the Social Security Administration (SSA).

DATES: You may submit comments until September 28, 2018.

ADDRESSES: You may submit comments identified by the title of the information collection activity, by any of the following methods.

(1) *By mail send to:* Corporation for National and Community Service, Attention: Amy Borgstrom, Associate Director for Policy, 250 E Street SW, Washington, DC 20525.

(2) *By email to: aborgstrom@cns.gov.*

(3) Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 606–3472 between 8:30 a.m. and 5:00 p.m. Eastern Time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Amy Borgstrom, Associate Director for Policy, (202) 606–6930 or *aborgstrom@cns.gov.*

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), regulates the use of computer matching agreements by federal agencies when records in a system of records are matched with other federal, state, or local government records. Among other things, it requires federal agencies involved in computer matching agreements to publish a notice in the **Federal Register** regarding the establishment of a computer matching agreement. The SSA will conduct a computer match with CNCS to verify Social Security numbers (SSN) and provide the citizenship status, as recorded in SSA records, of individuals applying to serve in approved national service positions and those designated to receive national service education awards under the National and Community Service Act of 1990 (NCSA). 42 U.S.C. 12501, *et seq.*

Inclusive Dates of the Matching Program

This renewed matching program will continue for 18 months after the effective date and may be extended for an additional 12 months thereafter, if the conditions specified in 5 U.S.C. 552a(o)(2)(A) and OMB Circular A–108 (December 23, 2016) have been met. In order to renew this agreement, both CNCS and SSA must certify to their respective Data Integrity Boards that: (1) The matching program will be

conducted without change; and (2) the matching program has been conducted in compliance with the original agreement.

Procedure

CNCS will provide SSA with a data file including social security number, first and last names, and date of birth. SSA will conduct a match on the identifying information. If the match does not return a result verifying the individual's social security number and citizenship status, CNCS will notify the individual or the grant recipient program that selected the individual. The affected individual will have an opportunity to contest the accuracy of the information provided by SSA in accordance with the requirements of 5 U.S.C. 552a(p) and applicable OMB guidelines.

The individual will have at least 30 days from the date of the notice to submit evidence demonstrating the accuracy of the social security number and/or proof that the individual is a citizen, national, or lawful permanent resident alien of the United States. CNCS will consider any timely submitted evidence to determine whether the record establishes the accuracy of the social security number and/or the United States citizenship, nationality or lawful permanent residency of the individual. If the individual fails to timely submit such evidence, CNCS will presume that the information provided by SSA is accurate. The notice will so advise the individual.

Additional Notice

Applicants and transferees will be informed that information provided on the application is subject to verification through a computer matching program. The application package will contain a privacy certification notice that the applicant must sign authorizing CNCS to verify the information provided. Individuals receiving a transferred Education Award will be informed at the time identifying information is requested from the transferee, that their data will be verified through this computer matching agreement. The form requesting this data will contain a privacy certification notice that the applicant must sign authorizing CNCS to verify the information provided.

Participating Agencies: Participants in this computer matching program are the Social Security Administration (source agency) and the Corporation for National and Community Service (recipient agency).

Authority for Conducting the Matching Program: The authority for creating this matching program is pursuant to section 1711 of the Serve America Act of 2009 (Pub. L. 111–13, April 21, 2009). The legal authority for the disclosure of SSA data under this agreement is pursuant to section 1106 of the Social Security Act (42 U.S.C. 1306(b)), 5 U.S.C. 552a(b)(3) of the Privacy Act, and associated regulations and guidance.

CNCS's legal authority to enter into this agreement is in section 146(b)(3) of the National and Community Service Act (NCSA) (42 U.S.C. 12602(a)), concerning an individual's eligibility to receive a Segal AmeriCorps Education Award from the National Service Trust upon successful completion of a term of service in an approved national service position. The authority is further articulated in section 1711 of the Serve America Act (Pub. L. 111–13), that directs CNCS to enter into a data matching agreement to verify statements made by an individual declaring that such individual is in compliance with section 146(b)(3) of the NCSA by comparing information provided by the individual with information relevant to such a declaration in the possession of another federal agency.

Purpose(s): The computer matching agreement between CNCS and SSA enables CNCS to verify the social security numbers of most applicants for approved national service positions, and verify statements made by those applicants regarding their citizenship status according to the records that SSA has on file. SSA is not the custodian of U.S. citizenship records.

Categories of Individuals: Each individual who applies to serve in an approved national service position, and will receive an Education Award pursuant to 42 U.S.C. 142(a) including positions in AmeriCorps State and National, AmeriCorps VISTA, AmeriCorps NCCC, Serve America Fellows, as well as individuals who are the recipient of a transferred Education Awards are subject to the matching program. At the time of application, CNCS must certify that the individual meets the citizenship eligibility criteria to serve in the position and/or receive an Education Award, *i.e.,* is a citizen, national, or lawful permanent resident alien of the United States. Furthermore, these members must provide an accurate social security number.

Categories of Records: The Master Files of Social Security Number Holders and SSN Applications SSA/OEEAS 60–0058, system of records last published at 74 FR 62866 (December 1, 2009) (Enumeration System) maintains records about each individual who has applied for and obtained an SSN. SSA uses information from the Enumeration System to assign SSNs. The information CNCS provides from the AmeriCorps Member Individual Account (Corporation 8) system of records will be matched against this system of records and verification results will be disclosed under the applicable routine use.

Dated: August 13, 2018.

Edward Davis,

Acting Chief Information Officer.

[FR Doc. 2018–18684 Filed 8–28–18; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Availability of Software and Documentation for Licensing

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Availability of Memory Visualization software and documentation for licensing.

SUMMARY: The Department of the Air Force announces the availability of Memory Visualization software and related documentation, which aids digital forensics examinations of computing device memory captures for user and malware identification.

ADDRESSES: Licensing interests should be sent to: Air Force Institute of Technology, Office of Research and Technology Applications, AFIT/ENR, 2950 Hobson Way, Building 641, Rm. 101c, Wright-Patterson AFB, OH 45433; Facsimile: (937) 656–7139.

FOR FURTHER INFORMATION CONTACT: Air Force Institute of Technology, Office of Research and Technology Applications, AFIT/ENR, 2950 Hobson Way, Building 641, Rm. 101c, Wright-Patterson AFB, OH 45433; Facsimile: (937) 656–7139, or Mr. Jeff Murray, (937) 255–3636, Ext. 4665.

SUPPLEMENTARY INFORMATION: One major challenge facing digital forensics practitioners is the complicated task of acquiring an understanding of the digital data residing in electronic devices. Currently, this task requires significant experience and background to aggregate the data their tools provide from the digital artifacts. Most of the tools available present their results in text files or tree lists. It is up to the practitioner to mentally capture a global understanding of the state of the device at the time of seizure and find the items of evidentiary interest.

The Memory Visualization software applies Information Visualization

techniques to improve the analysis of digital forensic evidence from Operating System memory captures. This visualization tool presents both global and local views of the evidence based on user interactions with the graphics. The visualization also maintains connection to the data behind the visualization so that the practitioner can verify manually. The resulting visualizations provide the necessary details for verifying digital artifacts and assists in locating additional items of relevance.

This notice is pursuant to the provisions of Section 801 of Public Law 113–66 (2014 National Defense Authorization Act).

Henry Williams,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2018–18731 Filed 8–28–18; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Department of the Army

Chief of Engineers Environmental Advisory Board; Notice of Federal Advisory Committee Meeting

AGENCY: Department of the Army, DoD.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Department of Defense is publishing this notice to announce that the following Federal Advisory Committee meeting of the Chief of Engineers Environmental Advisory Board (EAB) will take place.

DATES: The meeting will be held from 8:30 a.m. to 12:00 p.m. on September 21, 2018. Public registration will begin at 8:00 a.m.

ADDRESSES: The meeting will be conducted at the Alexander Hamilton U.S. Custom House; 1 Bowling Green; New York, NY 10004 (enter on lower level-group entrance).

FOR FURTHER INFORMATION CONTACT: Ms. Mindy M. Simmons, the Designated Federal Officer (DFO) for the committee, in writing at U.S. Army Corps of Engineers, ATTN: CECW–P, 441 G St. NW, Washington, DC 20314; by telephone at 202–761–4127; and by email at *Mindy.M.Simmons@usace.army.mil.* Alternatively, contact Ms. Jeanette Gallihugh, the Alternate Designated Federal Officer (ADFO), in writing at the Institute for Water Resources, U.S. Army Corps of Engineers, ATTN: CEIWR–GW, 7701 Telegraph Road, Casey Building, Alexandria, VA 22315–3868; by telephone at 703–428–64966; and by email at *Jeanette.L.Gallihugh@usace.army.mil.*The most up-to-date changes to the meeting agenda can be found on the following website: *http://www.usace.army.mil/Missions/Environmental/EnvironmentalAdvisoryBoard.aspx.*

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) 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 102–3.140 and 102–3.150.

Purpose of the Meeting: The EAB will advise the Chief of Engineers on environmental policy, identification and resolution of environmental issues and missions, and addressing challenges, problems, and opportunities in an environmentally responsible manner. The EAB is interested in written and verbal comments from the public relevant to these purposes.

Agenda: At this meeting the agenda will include how the host USACE district is ''Living the Environmental Operating Principles''; discussions on ongoing EAB work efforts, such as regional strategic planning, sustainability training, inland regional sediment management, and monitoring and adaptive management; and presentations and discussions about improving the environmental metrics used by the Army Corps of Engineers.

Availability of Materials for the Meeting: A copy of the agenda or any updates to the agenda for the September 21, 2018 meeting will be available at the meeting. The final version will be provided at the meeting. All materials will be posted to the website after the meeting.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and subject to the availability of space, this meeting is open to the public. Registration of members of the public who wish to attend the meeting will begin at 8:00 a.m. on the day of the meeting. Seating is limited and is on a first-to-arrive basis. Attendees will be asked to provide their name, title, affiliation, and contact information to include email address and daytime telephone number at registration. Any interested person may attend the meeting, file written comments or statements with the committee, or make verbal comments from the floor during the public meeting, at the times, and in the manner, permitted by the committee, as set forth below. Special Accommodations: The meeting venue is fully handicap accessible, with wheelchair access. Individuals requiring special accommodations to access the public meeting or seeking additional information about public access procedures, should contact Ms. Simmons, the committee DFO, or Ms. Gallihugh, the ADFO, at the email addresses or telephone numbers listed in the **FOR FURTHER INFORMATION CONTACT** section, at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Written 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 EAB about its mission and/or the topics to be addressed in this public meeting. Written comments or statements should be submitted to Ms. Simmons, the committee DFO, or Ms. Gallihugh, the committee ADFO, via electronic mail, the preferred mode of submission, at the addresses listed in the **FOR FURTHER INFORMATION CONTACT** section in the following formats: Adobe Acrobat or Microsoft Word. The comment or statement must include the author's name, title, affiliation, address, and daytime telephone number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the committee DFO or ADFO at least five (5) business days prior to the meeting so that they may be made available to the EAB for its consideration prior to the meeting. Written comments or statements received after this date may not be provided to the EAB until its next meeting. Please note that because the EAB operates under the provisions of the Federal Advisory Committee Act, as amended, all written comments will be treated as public documents and will be made available for public inspection.

Verbal Comments: Members of the public will be permitted to make verbal comments during the meeting only at the time and in the manner allowed herein. If a member of the public is interested in making a verbal comment at the open meeting, that individual must submit a request, with a brief statement of the subject matter to be addressed by the comment, at least three (3) business days in advance to the committee DFO or ADFO, via electronic mail, the preferred mode of submission, at the addresses listed in the **FOR FURTHER INFORMATION CONTACT** section. The committee DFO and ADFO will log each request to make a comment, in the order received, and determine whether

the subject matter of each comment is relevant to the EAB's mission and/or the topics to be addressed in this public meeting. A 15-minute period near the end of meeting will be available for verbal public comments. Members of the public who have requested to make a verbal comment and whose comments have been deemed relevant under the process described above, will be allotted no more than three (3) minutes during this period, and will be invited to speak in the order in which their requests were received by the DFO and ADFO.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2018–18718 Filed 8–28–18; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2018–HA–0038]

Submission for OMB Review; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DoD.

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by September 28, 2018.

ADDRESSES: Comments and recommendations on the proposed information collection should be emailed to Ms. Cortney Higgins, DoD Desk Officer, at *oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer, Docket ID number, and title of the information collection.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: TriCare DoD/CHAMPUS Medical Claim Patient's Request for Medical Payment; DD Form 2642; OMB Control Number 0720–0006.

Type of Request: Extension.

Number of Respondents: 830,000.

Responses per Respondent: 1.

Annual Responses: 830,000.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 207,500.

Needs and Uses: The DD–2642, ''TRICARE DoD/CHAMPUS Medical Claim Patient's Request for Medical Payment'' form is used by TRICARE beneficiaries to claim reimbursement for medical expenses under the TRICARE Program (formerly the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)). The information collected will be used by TRICARE to determine beneficiary eligibility, other health insurance liability, certification that the beneficiary has the received care, and reimbursement for medical services received.

Affected Public: Individuals or households.

Frequency: As required.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Cortney Higgins.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Mr. Frederick Licari.

Requests for copies of the information collection proposal should be sent to Mr. Licari at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: August 24, 2018.

Aaron T. Siegel,

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

[FR Doc. 2018–18747 Filed 8–28–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2018–OS–0037]

Submission for OMB Review; Comment Request

AGENCY: Under Secretary of Defense for Acquisition and Sustainment, DoD.

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by September 28, 2018.

ADDRESSES: Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at *oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer, Docket ID number, and title of the information collection.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Defense Materiel Disposition Procedures for the Sale of DoD Materiel; DRMS 1645, DRMS 2006, and SF 114–A; OMB Control Number 0704–0534.

Type of Request: Extension.

Number of Respondents: 72.

Responses per Respondent: 2.63.

Annual Responses: 189.

Average Burden per Response: 1.23 hours.

Annual Burden Hours: 231.75.

Needs and Uses: This collection allows the Department of Defense (DoD) and its representatives to assess the ability of prospective purchasers to comply with applicable laws and regulations before the sale of materiel. Defense Reutilization and Marketing Service (DRMS) Form 1645, ''Statement of Intent,'' and Standard Form (SF) 114A, ''Sale of Government Property—Item Bid Page—Sealed Bid,'' are used to identify the nature of the purchaser's business, where the materials will be stored, and what the buyer's intentions are with the materiel (*i.e.,* use the materiel as intended, re-sell to others, scrap the materiel for recovery of contents, or re-refine or re-process the materiel). These forms are used to determine if DRMS Form 2006, ''Pre-Award/Post-Award On-Site Review,'' will also be needed; DRMS Form 2006 allows DoD components to determine if the purchaser is capable of meeting environmental and hazardous material handling responsibilities, in compliance with CFR part 102 of Title 41. Compliance with this regulation must be ascertained before DoD components may make an award of hazardous and dangerous property.

Affected Public: Business or other for-profit.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method: *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Mr. Frederick Licari.

Requests for copies of the information collection proposal should be sent to Mr. Licari at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2018–18746 Filed 8–28–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Intent To Prepare Supplement II to the Final Environmental Impact Statement, Mississippi River and Tributaries (MR&T) Project, Mississippi River Mainline Levees and Channel Improvement

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Intent; extension of public comment period.

SUMMARY: USACE is announcing the public scoping meeting dates, times, and locations and extending the scoping comment period for the Notice of Intent (NOI) to prepare Supplement II (SEIS II) to the Final Environmental Impact Statement, Mississippi River and Tributaries (MR&T) Project, Mississippi River Mainline Levees and Channel Improvement of 1976 (1976 EIS), as updated and supplemented by Supplement No. 1, Mississippi River and Tributaries Project, Mississippi River Mainline Levee Enlargement and Seepage Control of 1998 (SEIS I) to the 1976 EIS. The NOI was published in the **Federal Register** on July 13, 2018. The public comment period on the NOI was scheduled to end on October 1, 2018. USACE is extending the comment period by 14 days and will now consider comments received through October 15, 2018.

DATES: The deadline for receipt of scoping comments is extended to October 15, 2018.

ADDRESSES: Written comments should be submitted: (1) To USACE at public scoping meetings; (2) by regular U.S. Mail mailed to: U.S. Army Corps of Engineers, ATTN: CEMVN–PDC–UDC, 167 North Main Street, Room B–202, Memphis, Tennessee 38103–1894; or (3) by email to: *MRL-SEIS-2@usace.army.mil.* Please include your name and return address on the first page of your written comments. All personally identifiable information voluntarily submitted by a commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: For direct questions about the NEPA process and upcoming scoping meetings please contact: Mr. Mike Thron, by mail at U.S. Army Corps of Engineers, ATTN: CEMVN–PDC–UDC, 167 North Main Street, Room B–202, Memphis, Tennessee 38103–1894; by telephone at (901) 544–0708; or by email at *MRL-SEIS-2@usace.army.mil.* Additional project and meeting information is also available at the Project website at: *http://www.mvk.usace.army.mil/MRLSEIS/.*

SUPPLEMENTARY INFORMATION: The dates, locations, and times of the public scoping meetings are:

1. September 10, 2018 at the Holiday Inn Blytheville, 1121 East Main Street, Blytheville, Arkansas 72315 from 7 p.m. to 9 p.m.

2. September 11, 2018 at the Vicksburg Convention Center, 1600 Mulberry Street, Vicksburg, Mississippi, 39180 from 7 p.m. to 9 p.m.

3. September 12, 2018 at the Louisiana Department of Environmental Quality, Room C111, 602 North 5th Street, Baton Rouge, Louisiana, 70802 from 7 p.m. to 9 p.m.

4. September 13, 2018 at United States Army Corps of Engineers, New Orleans District Headquarters District Assembly Room, 7400 Leake Avenue, New Orleans, Louisiana, 70118 from 7 p.m. to 9 p.m.

Dated: August 22, 2018.

Edward P. Lambert,

Chief, Environmental Compliance Branch, Regional Planning and Environmental Division South.

[FR Doc. 2018–18723 Filed 8–28–18; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF ENERGY

[FE Docket No. 13–147–LNG]

Change in Control; Delfin LNG, LLC

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of a Notice of Change in Control Through Indirect Equity Ownership Changes (Notice), filed July 10, 2018 by Delfin LNG, LLC (Delfin LNG) in FE Docket No. 13–147–LNG. The Notice describes changes to the corporate structure and ownership of Delfin LNG. The Notice was filed under section 3 of the Natural Gas Act (NGA).

DATES: Protests, motions to intervene or notices of intervention, as applicable, and written comments are to be filed using procedures detailed in the Public Comment Procedures section no later than 4:30 p.m., Eastern time, September 13, 2018.

ADDRESSES:

Electronic Filing by email: fergas@hq.doe.gov.

Regular Mail: U.S. Department of Energy (FE–34), Office of Regulation and International Engagement, Office of Fossil Energy, P.O. Box 44375, Washington, DC 20026–4375.

Hand Delivery or Private Delivery Services (e.g., FedEx, UPS, etc.): U.S. Department of Energy (FE–34), Office of Regulation and International Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Larine Moore or Amy Sweeney, U.S. Department of Energy (FE–34), Office of Regulation and International Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–9478; (202) 586–7893.

Cassandra Bernstein or Ronald (R.J.) Colwell, U.S. Department of Energy (GC–76), Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–9793; (202) 586–8499.

SUPPLEMENTARY INFORMATION:

Summary of Change in Control

On July 10, 2018, Delfin LNG filed a Notice of Change in Control Through Indirect Equity Ownership Changes in the above-referenced docket.[1] In the Notice, Delfin LNG states that it has recently undergone changes in its corporate structure and ownership. Specifically, Delfin LNG was a wholly-owned subsidiary of Fairwood Peninsula Energy (Fairwood Peninsula). An intermediary holding company, Delfin Midstream, LLC (Delfin Midstream) was subsequently established, with Fairwood Peninsula owning 100% of Delfin Midstream and Delfin Midstream owning 100% of Delfin LNG. Thereafter, Delfin Midstream was converted from a limited liability company to a corporation. In June 2018, equity shares in Delfin Midstream were sold to a variety of investors to raise additional capital. Effective June 12, 2018, Fairwood Peninsula's ownership of Delfin Midstream had been reduced from 100% to 30.7%. Two other entities (Talisman Global Alternative Master, L.P. and Talisman Global Capital Master, L.P.) also own or control 10% or more of the voting securities of Delfin Midstream. Delfin Midstream continues to own 100% of Delfin LNG.[2]

Additional details can be found in Delfin LNG's Notice, posted on the DOE/FE website at: *https://fossil.energy.gov/ng_regulation/sites/default/files/programs/Delfin_CIC_07_11_18.pdf.*

DOE/FE Evaluation

DOE/FE will review Delfin LNG's Notice in accordance with its Procedures for Changes in Control Affecting Applications and Authorizations to Import or Export Natural Gas (CIC Procedures).[3] Consistent with the CIC Procedures, this Notice addresses only the authorization granted to Delfin LNG to export liquefied natural gas (LNG) to non-free trade agreement (non-FTA) countries in DOE/FE Order No. 4028 (FE Docket No. 13–147–LNG).[4] If no interested person protests the change in control and DOE takes no action on its own motion, the change in control will be deemed granted 30 days after publication in the **Federal Register**. If one or more protests are submitted, DOE will review any motions to intervene, protests, and answers, and will issue a determination as to whether the proposed changes in control have been demonstrated to render the underlying authorization inconsistent with the public interest.

Public Comment Procedures

Interested persons will be provided 15 days from the date of publication of this notice in the **Federal Register** in order to move to intervene, protest, and answer Delfin LNG's Notice. Protests, motions to intervene, notices of intervention, and written comments are invited in response to this notice only as to the change in control described in Delfin LNG's Notice, and only with respect to Delfin LNG's non-FTA authorization in DOE/FE Order No. 4028. All protests, comments, motions to intervene, or notices of intervention must meet the requirements specified by DOE's regulations in 10 CFR part 590.

Filings may be submitted using one of the following methods: (1) Preferred method: Emailing the filing to *fergas@hq.doe.gov,* with the individual FE Docket Number in the title line, or Delfin LNG Change in Control in the title line to include the applicable docket in this notice; (2) mailing an original and three paper copies of the filing to the Office of Regulation and International Engagement at the address listed in **ADDRESSES**; or (3) hand delivering an original and three paper copies of the filing to the Office of Regulation and International Engagement at the address listed in **ADDRESSES**. All filings must include a reference to the individual FE Docket Number(s) in the title line, or Delfin LNG Change in Control in the title line to include all applicable docket in this notice. **Please Note:** If submitting a filing via email, please include all related documents and attachments (*e.g.,* exhibits) in the original email correspondence. Please do not include any active hyperlinks or password protection in any of the documents or attachments related to the filing. All electronic filings submitted to DOE must follow these guidelines to ensure that all documents are filed in a timely manner. Any hardcopy filing submitted greater in length than 50 pages must also include, at the time of the filing, a digital copy on disk of the entire submission.

Delfin LNG's Notice and any filed protests, motions to intervene, notices of intervention, and comments are available for inspection and copying in the Office of Regulation and International Engagement docket room, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The Notice and any filed protests, motions to intervene, notices of interventions, and comments will also be available electronically by going to the following DOE/FE Web address: *http://www.fe.doe.gov/programs/gasregulation/index.html.*

Signed in Washington, DC, on August 23, 2018.

Amy Sweeney,

Director, Division of Natural Gas Regulation, Office of Fossil Energy.

[FR Doc. 2018–18728 Filed 8–28–18; 8:45 am]

BILLING CODE 6450–01–P

[1] Delfin LNG, LLC, FE Docket Nos. 13–129–LNG and 13–147–LNG, Notice of Change of Control Through Indirect Equity Ownership Changes (July 10, 2018) [hereinafter Delfin LNG Notice].

[2] *See id.* at 2–3.

[3] 79 FR 65541 (Nov. 5, 2014).

[4] Delfin LNG's Notice also applies to its FTA authorization in FE Docket No. 13–129–LNG, but DOE/FE will respond to that portion of the Notice separately pursuant to its CIC Procedures, 79 FR 65542.

DEPARTMENT OF ENERGY

Orders Granting Import/Export Authority Under the Natural Gas Act During July, 2018

	FE Docket Nos.
Southern LNG Company, L.L.C	18–15–LNG
Jordan Cove Energy Project L.P	11–127–LNG
Corpus Christi Liquefaction, LLC	15–97–LNG
Uniper Global Commodities North America LLC.	18–73–NG; 17–83–NG
Chevron U.S.A. Inc	18–74–LNG
ETC Marketing, Ltd	18–75–NG
Sacramento Municipal Utility District.	18–76–NG
J. Aron & Company LLC	18–77–NG
S.D. Sunnyland Enterprises, Inc	18–47–NG
Twin Eagle Resource Management, LLC.	18–79–NG
Vista Energy Marketing, L.P	18–81–NG
Vitol Inc	18–80–NG
Atlantic Power Energy Services (US) LLC.	18–83–NG
Gunvor USA LLC	18–84–NG; 17–139–NG
Sabine Pass Liquefaction, LLC	18–85–LNG
LYZ Solutions LLC	18–40–LNG
Union Gas Limited	18–71–NG
Certarus (USA) Ltd	18–88–NG
Energia Azteca X, S.A. de C.V	18–86–NG

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during July 2018, it issued orders granting or vacating authority to import and export natural gas, and to import and export liquefied natural gas (LNG). These orders are summarized in the attached appendix and may be found on the FE website at *https://www.energy.gov/fe/listing-doefe-authorizationsorders-issued-2018-0.*

They are also available for inspection and copying in the U.S. Department of Energy (FE–34), Division of Natural Gas

Regulation, Office of Regulation and International Engagement, Office of Fossil Energy, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on August 23, 2018.

Amy Sweeney,

Director, Division of Natural Gas Regulation.

Appendix

DOE/FE ORDERS GRANTING IMPORT/EXPORT AUTHORIZATIONS

4206	07/6/18	18–15–LNG	Southern LNG Company, L.L.C	Order 4206 granting blanket authorization to export LNG by vessel from the Elba Island Terminal located in Chatham County, Georgia, to Free Trade Agreement and Non-free Trade Agreement Nations.
3041–A	07/20/18	11–127–LNG	Jordan Cove Energy Project L.P	Order 3041–A amending long-term Multi-Contract Authority to export LNG by vessel from the Proposed Jordan Cove LNG Terminal to Free Trade Agreement Nations.
3699–A	07/20/18	15–97–LNG	Corpus Christi Liquefaction, LLC	Order 3699–A granting Request to Vacate long-term Multi-Contract Authority to export LNG by vessel to Free Trade Agreement Nations and to Withdraw Application to export LNG by vessel to Non-free Trade Agreement Nations.
4207; 4064–A	07/20/18	18–73–NG; 17–83–NG	Uniper Global Commodities North America LLC.	Order 4207 granting blanket authority to import/export natural gas from/to Canada and Vacating prior authority Order 4064.
4208	07/20/18	18–74–LNG	Chevron U.S.A. Inc	Order 4208 granting blanket authority to import LNG from various international sources by vessel.
4209	07/20/18	18–75–NG	ETC Marketing, Ltd	Order 4209 granting blanket authority to import/export natural gas from/to Mexico.
4210	07/20/18	18–76–NG	Sacramento Municipal Utility District.	Order 4210 granting blanket authority to import natural gas from Canada.
4211	07/20/18	18–77–NG	J. Aron & Company LLC	Order 4211 granting blanket authority to import/export natural gas from/to Canada/Mexico.
4212	07/24/18	18–47–NG	S.D. Sunnyland Enterprises, Inc	Order 4212 granting blanket authority to import LNG from various international sources by vessel and to export LNG to Canada by vessel.
4213	07/24/18	18–79–NG	Twin Eagle Resource Management, LLC.	Order 4213 granting blanket authority to import/export natural gas from/to Canada/Mexico.
4214	07/24/18	18–81–NG	Vista Energy Marketing, L.P	Order 4214 granting blanket authority to import natural gas from Canada.
4215	07/24/18	18–80–NG	Vitol Inc	Order 4215 granting blanket authority to import/export natural gas from/to Mexico.
4216	07/24/18	18–83–NG	Atlantic Power Energy Services (US) LLC.	Order 4216 granting blanket authority to import/export natural gas from/to Canada.
4217; 4119–A	07/24/18	18–84–NG; 17–139–NG	Gunvor US LLC	Order 4217 granting blanket authority to import/export natural gas from/to Canada/Mexico and vacating prior authority Order 4119.
4218	07/24/18	18–85–NG	Sabine Pass Liquefaction, LLC	Order 4218 granting blanket authority to import LNG from various international sources by vessel.
4219	07/24/18	18–40–LNG	LYZ Solutions LLC	Order 4219 granting blanket authority to import LNG from various international sources by vessel and to export LNG to Canada/Mexico by vessel.
4220	07/31/18	18–71–NG	Union Gas Limited	Order 4220 granting blanket authority to import/export natural gas from/to Canada.
4221	07/31/18	18–88–NG	Certarus (USA) Ltd	Order 4221 granting blanket authority to import/export natural gas from/to Canada/Mexico.
4222	07/31/18	18–86–NG	Energia Azteca X, S.A. de C.V	Order 4222 granting blanket authority to export natural gas to Mexico.

[FR Doc. 2018–18729 Filed 8–28–18; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–460]

Application to Export Electric Energy; Enel Trading North America, LLC

AGENCY: Office of Electricity, DOE.

ACTION: Notice of application.

SUMMARY: Enel Trading North America, LLC (ETNA or Applicant) has applied for authority to transmit electric energy from the United States to Mexico pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before September 28, 2018.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed to: Office of Electricity, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Electricity.Exports@hq.doe.gov,* or by facsimile to 202–586–8008.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the United States Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b) and 7172(f)) and require authorization under section 202(e) of the Federal Power Act (16 U.S.C. 824a(e)).

On August 3, 2018, DOE received an application from ETNA for authority to transmit electric energy from the United States to Mexico as a power marketer for a five-year term using existing international transmission facilities.

In its application, the Applicant states that it ''is not a franchised public utility with a transmission or distribution system, and does not have captive customers.'' The electric energy that ETNA proposes to export to Mexico would be surplus energy purchased from third parties such as electric utilities and Federal power marketing agencies pursuant to voluntary agreements. The existing international transmission facilities to be utilized by the Applicant have previously been authorized by Presidential Permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's

(FERC's) Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to these proceedings should file a motion to intervene at the above address in accordance with FERC Rule 214 (18 CFR 385.214). Five (5) copies of such comments, protests, or motions to intervene should be sent to the address provided above on or before the date listed above.

Comments and other filings concerning ETNA's application to export electric energy to Mexico should be clearly marked with OE Docket No. EA–460. An additional copy is to be provided to Margaret M. Bateman, Esq., Enel Green Power North America, Inc., 100 Brickstone Square, Suite 300, Andover, MA 01810.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after a determination is made by DOE that the proposed action will not have an adverse impact on the sufficiency of supply or reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program website at *http://energy.gov/node/11845,* or by emailing Angela Troy at *Angela.Troy@hq.doe.gov.*

Signed in Washington, DC, on August 23, 2018.

Christopher Lawrence,

Electricity Policy Analyst, Office of Electricity.

[FR Doc. 2018–18744 Filed 8–28–18; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Certification Notice—254; Notice of Filing of Self-Certification of Coal Capability Under the Powerplant and Industrial Fuel Use Act

AGENCY: Office of Electricity Delivery, DOE.

ACTION: Notice of filing.

SUMMARY: On July 27, 2018, Panda Hummel Station LLC, as owner and operator of a new baseload electric generating powerplant, submitted a coal capability self-certification to the Department of Energy (DOE). The FUA and regulations thereunder require DOE to publish a notice of filing of self-certification in the **Federal Register**.

ADDRESSES: Copies of coal capability self-certification filings are available for public inspection, upon request, in the Office of Electricity, Mail Code OE–20, Room 8G–024, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Christopher Lawrence at (202) 586–5260.

SUPPLEMENTARY INFORMATION: On July 27, 2018, Panda Hummel Station LLC, as owner and operator of a new baseload electric generating powerplant, submitted a coal capability self-certification to the Department of Energy (DOE) pursuant to § 201(d) of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended, and DOE regulations in 10 CFR 501.60, 61. The FUA and regulations thereunder require DOE to publish a notice of filing of self-certification in the **Federal Register**. 42 U.S.C. 8311(d)(1) and 10 CFR 501.61(c). Title II of FUA, as amended (42 U.S.C. 8301 *et seq.*), provides that no new baseload powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. Pursuant to the FUA, in order to meet the requirement of coal capability, the owner or operator of such a facility proposing to use natural gas or petroleum as its primary energy source shall certify to the Secretary of Energy (Secretary), prior to construction or prior to operation as a baseload powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with FUA section 201(a) as of the date it is filed with the Secretary. 42 U.S.C. 8311.

The following owner of a proposed new baseload electric generating powerplant has filed a self-certification of coal-capability with DOE pursuant to FUA section 201(d) and in accordance with DOE regulations in 10 CFR 501.60, 61:

Owner: Panda Hummel Station LLC.

Capacity: 1,124 megawatts (MW).

Plant Location: Shamokin Dam, PA 17876.

In-Service Date: June 2018.

Signed in Washington, DC, on August 23, 2018.

Christopher Lawrence,

Program Management Analyst, Office of Electricity.

[FR Doc. 2018–18745 Filed 8–28–18; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: National Nuclear Security Administration, U.S. Department of Energy.

ACTION: Submission for Office of Management and Budget (OMB) review; comment request.

SUMMARY: The Department of Energy (DOE) has submitted an information collection request to the OMB for extension under the provisions of the Paperwork Reduction Act of 1995. The information collection requests a three-year extension of Assistance to Foreign Atomic Energy Activities, OMB Control Number 1901–0263. The proposed collection will implement the regulatory requirements for U.S. persons engaged in the export of unclassified nuclear technology and assistance to submit reports and applications to DOE. This information collection is necessary for the Secretary of Energy to execute his legal and regulatory responsibilities pursuant to the Atomic Energy Act of 1954, as amended (AEA).

DATES: Comments regarding this collection must be received on or before September 28, 2018. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, please advise the OMB Desk Officer of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at (202) 395–4718.

ADDRESSES: Written comments should be sent to the DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street NW, Washington, DC 20503; and

Katie Strangis, Policy Advisor, Office of Nonproliferation and Arms Control, NA–24, National Nuclear Security Administration, Department of Energy, 1000 Independence Avenue SW, Room 7F–075, Washington, DC 20585, Fax: (202) 586–6789, Email: *part810@nnsa.doe.gov* (Include ''Paperwork Reduction Act'' in the subject line).

Due to potential delays in DOE's receipt and processing of mail sent through the U.S. Postal Service, DOE encourages responders to submit comments electronically to ensure timely receipt.

FOR FURTHER INFORMATION CONTACT: Katie Strangis, Policy Advisor, Office of Nonproliferation and Arms Control, NA–24, National Nuclear Security Administration, Department of Energy, 1000 Independence Avenue SW, Room

7F–075, Washington, DC 20585, Fax: (202) 586–6789, Email: *part810@nnsa.doe.gov* (Include ''Paperwork Reduction Act'' in the subject line).

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) *OMB No.:* 1901–0263; (2) *Information Collection Request Title:* Assistance to Foreign Atomic Energy Activities; (3) *Type of Review:* Extension; (4) *Purpose:* This collection of information is necessary in order to provide the Secretary of Energy with the appropriate information needed to make informed determinations regarding requests to directly or indirectly engage or participate in the development or production of special nuclear material outside the United States; (5) *Annual Estimated Number of Respondents:* 89; (6) *Annual Estimated Number of Total Responses:* 596; (7*) Annual Estimated Number of Burden Hours:* 1,788; (8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $178,600.

Statutory Authority: Sections 57 b.(2) and 161(c) of the AEA.

Signed in Washington, DC, on August 23, 2018.

Sean Oehlbert,

(Acting) Policy Director, Office of Nonproliferation and Arms Control, Department of Energy's National Nuclear Security Administration.

[FR Doc. 2018–18741 Filed 8–28–18; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–459]

Application To Export Electric Energy; Mercuria Energy America, Inc.

AGENCY: Office of Electricity, DOE.

ACTION: Notice of application.

SUMMARY: Mercuria Energy America, Inc. (MEAI or Applicant) has applied for authority to transmit electric energy from the United States to Mexico pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before September 28, 2018.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed to: Office of Electricity, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Electricity.Exports@hq.doe.gov,* or by facsimile to 202–586–8008.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the United States Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b) and 7172(f)) and require authorization under section 202(e) of the Federal Power Act (16 U.S.C. 824a(e)).

On July 30, 2018, DOE received an application from MEAI for authority to transmit electric energy from the United States to Mexico as a power marketer for a five-year term using existing international transmission facilities. MEAI is also registered as a Purchasing and Selling Entity, as defined by the North American Electric Reliability Corporation (NERC).

In its application, MEAI states that it ''does not currently own or control electric generation or transmission facilities of its own in the United States over which the export of wholesale electricity could have a reliability, fuel use, or system stability impact,'' and that it does not have a franchised service area. The electric energy that MEAI proposes to export to Mexico would be surplus energy purchased from third parties such as electric utilities and Federal power marketing agencies pursuant to voluntary agreements. The existing international transmission facilities to be utilized by the Applicant have previously been authorized by Presidential Permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's (FERC's) Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to these proceedings should file a motion to intervene at the above address in accordance with FERC Rule 214 (18 CFR 385.214). Five (5) copies of such comments, protests, or motions to intervene should be sent to the address provided above on or before the date listed above.

Comments and other filings concerning MEAI's application to export electric energy to Mexico should be clearly marked with OE Docket No. EA–459. An additional copy is to be provided to both Chloe Cromarty and Mark Greenberg, 20 E. Greenway Plaza, Suite 650, Houston, TX 77046.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after a determination is made by DOE that the proposed action will not have an adverse impact on the sufficiency of supply or reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program website at *http://energy.gov/node/11845,* or by emailing Angela Troy at *Angela.Troy@hq.doe.gov.*

Signed in Washington, DC, on August 23, 2018.

Christopher Lawrence,

Electricity Policy Analyst, Office of Electricity.

[FR Doc. 2018–18743 Filed 8–28–18; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Number: PR18–80–000.
Applicants: Caprock Permian Natural Gas Transmission LLC.
Description: Tariff filing per 284.224/.123: Caprock Permian SOC to be effective 8/15/2018; Filing Type: 1340.
Filed Date: 8/16/18.
Accession Number: 20180816–5058.
Comments/Protests Due: 5 p.m. ET 9/6/18.

Docket Number: PR18–57–001.
Applicants: Targa Midland Gas Pipeline LLC.
Description: Tariff filing per 284.123(b),(e)/: Amendment to Petition for NGPA Section 311 Rate Approval to be effective 5/2/2018; Filing Type: 1000.
Filed Date: 8/22/18.
Accession Number: 20180822–5028.
Comments/Protests Due: 5 p.m. ET 8/29/18.

Docket Numbers: RP18–1071–000.
Applicants: Southern Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: MGAG Negotiated Rate to be effective 10/1/2018.
Filed Date: 8/22/18.
Accession Number: 20180822–5000.
Comments Due: 5 p.m. ET 9/4/18.

Docket Numbers: RP18–1072–000.
Applicants: Southern Natural Gas Company, L.L.C.

Description: § 4(d) Rate Filing: Fuel Retention Rates—Winter 2018 to be effective 10/1/2018.

Filed Date: 8/22/18.

Accession Number: 20180822–5046.

Comments Due: 5 p.m. ET 9/4/18.

Docket Numbers: RP18–1074–000.

Applicants: Texas Eastern Transmission, LP.

Description: § 4(d) Rate Filing: EPC AUGUST 2018 FILING CORRECTION—RP18–912–000 to be effective 9/1/2018.

Filed Date: 8/22/18.

Accession Number: 20180822–5066.

Comments Due: 5 p.m. ET 9/4/18.

Docket Numbers: RP18–75–004.

Applicants: Algonquin Gas Transmission, LLC.

Description: Compliance filing FRQ Settlement Compliance Filing re Docket No. RP18–75 to be effective 10/1/2018.

Filed Date: 8/22/18.

Accession Number: 20180822–5060.

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 23, 2018.

Nathaniel J. Davis Sr.

Deputy Secretary.

[FR Doc. 2018–18713 Filed 8–28–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER18–2264–000]

Macquarie Energy Trading LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

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

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

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is September 12, 2018.

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

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

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 23, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–18714 Filed 8–28–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2804–035]

Goose River Hydro, Inc.; Notice of Scoping Meetings and Environmental Site Review and Soliciting Scoping Comments

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Application:* New Minor License.

b. *Project No.:* 2804–035.

c. *Date filed:* February 2, 2018.

d. *Applicant:* Goose River Hydro, Inc.

e. *Name of Project:* Goose River Hydroelectric Project.

f. *Location:* On the Goose River, in Waldo County, Maine. No federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Nicholas Cabral, Goose River Hydro, Inc., 41 Sedgewood Drive, Kennebunk, ME 04043; (207) 604–4394; email—*gooseriverhydro@gmail.com.*

i. *FERC Contact:* Julia Kolberg at (202) 502–8261; or email at *julia.kolberg@ferc.gov.*

j. Deadline for filing scoping comments: October 26, 2018.

The Commission strongly encourages electronic filing. Please file motions to intervene and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–2804–035.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted, but is not ready for environmental analysis at this time.

l. The project consists of the following existing facilities:

Swan Lake Dam

(1) a 14-foot-high, 250-foot-long rock masonry gravity dam impounding Swan Lake with a surface area of approximately 1,364 acres at an elevation of 201 feet above sea level; (2) a concrete inlet structure; (3) three 3.5-foot-high, 4-foot-wide manually operated butterfly gates that regulate flow through the inlet structure; (4) two culverts that convey flow under Route 141; and (5) appurtenant facilities.

Mason's Dam

(1) a 15-foot-high, 86-foot-long rock masonry dam impounding a reservoir with a storage capacity of approximately 1,621 acre-feet at an elevation of 188 feet above sea level; (2) a concrete inlet structure; (3) a manually operated butterfly gate regulating flow from the inlet structure to the penstock; (4) a 3-foot-diameter, 350-foot-long steel penstock; (5) a 266-square-foot concrete powerhouse containing two Kaplan turbines and generating units with a licensed capacity of 100 kW; (6) a 300-foot-long, 12-kilovolt (kV) transmission line; and (7) appurtenant facilities. Mason's Development generates when flows in excess of 5 cfs are available and when an operator is present.

Kelly Dam

(1) a 15-foot-high, 135-foot-long masonry gravity dam impounding a reservoir with a storage capacity of approximately 200 acre-feet at an elevation of approximately 159 feet above sea level; and (2) three 3-foot-high, 2.5-foot-wide manually operated butterfly gates.

Mill Dam

(1) a 6-foot-tall, 70-foot-wide masonry dam impounding a reservoir with a storage capacity of approximately 7 acre-feet at an elevation of approximately 128 feet above sea level; (2) a concrete inlet structure; (3) a trash sluice with wooden stop logs; (4) a powerhouse containing a Francis-type turbine and generator unit with a licensed capacity of 75 kW; (5) a 60-foot-wide concrete spillway; and (6) an approximately 100-foot-long, 12-kV transmission line. The penstock used to deliver water to the powerhouse has been removed due to deterioration and subsequent leakage; thus, the powerhouse is not operating.

CMP Dam

(1) a 21-foot-high, 231-foot-long buttress dam impounding a reservoir with a storage capacity of approximately 72 acre-feet at an elevation of approximately 109 feet above sea level; (2) a manually operated low-level water release lift gate; (3) a manually operated lift gate regulating flow to the penstock; (4) a 5-foot-diameter, 1,200-foot-long steel penstock; (5) a 300-square-foot concrete and timber powerhouse with a Kaplan-type turbine and generator unit with a licensed capacity of 200 kW; (6) a 42-foot-long spillway; and (7) an approximately 500-foot-long, 12-kV transmission line. The penstock used to deliver water to the powerhouse is currently out of service due to damage, deterioration, and subsequent leakage; thus, the powerhouse is not operating.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Scoping Process.

The Commission intends to prepare an Environmental assessment (EA) on the project in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action. Although our current intent is to prepare an EA, there is a possibility that an environmental impact statement (EIS) may be required. The scoping process will satisfy the NEPA scoping requirements, irrespective of whether the Commission issues an EA or an EIS.

Scoping Meetings

FERC staff will conduct one agency scoping meeting and one public meeting. The agency scoping meeting will focus on resource agency and non-governmental organization (NGO) concerns, while the public scoping meeting is primarily for public input. All interested individuals, organizations, and agencies are invited to attend one or both of the meetings, and to assist the staff in identifying the scope of the environmental issues that should be analyzed in the EA. The times and locations of these meetings are as follows:

Agency Scoping Meeting

Date: Wednesday, September 26, 2018.
Time: 9:30 a.m. (EDT).
Place: Fireside Inn & Suites.
Address: 159 Searsport Avenue, Belfast, ME 04915.

Public Scoping Meeting

Date: Tuesday, September 25, 2018.
Time: 7:00 p.m. (EDT).
Place: Fireside Inn & Suites.
Address: 159 Searsport Avenue, Belfast, ME 04915.

Copies of the Scoping Document (SD1) outlining the subject areas to be addressed in the EIS were distributed to the parties on the Commission's mailing list. Copies of the SD1 will be available at the scoping meeting or may be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link (see item m above).

Environmental Site Review

The Applicant and FERC staff will conduct a project Environmental Site Review beginning at 10:00 a.m. on September 25, 2018. All interested individuals, organizations, and agencies are invited to attend. All participants should meet at the southeast corner of Swan Lake, across the street from Swan Lake Grocery at 979 Swan Lake Avenue, Swanville, ME 04915. All participants are responsible for their own transportation to the site. Anyone with questions about the environmental site review (or needing directions) should contact Nicholas Cabral at *gooseriverhydro@gmail.com* or at (207) 604–4394.

Objectives

At the scoping meetings, the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EA; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the EA, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the EA; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

Procedures

The meetings are recorded by a stenographer and become part of the formal record of the Commission proceeding on the project.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meeting and to assist the staff in defining and clarifying the issues to be addressed in the EA.

Dated: August 23, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–18708 Filed 8–28–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–3193–013.

Applicants: Brooklyn Navy Yard Cogeneration Partners, L.P.

Description: Notice of Non-Material Change in Status of Brooklyn Navy Yard Cogeneration Partners, L.P.

Filed Date: 8/23/18.

Accession Number: 20180823–5080.

Comments Due: 5 p.m. ET 9/13/18.

Docket Numbers: ER14–1818–016.

Applicants: Boston Energy Trading and Marketing LLC.

Description: Notice of Non-Material Change in Status of Boston Energy Trading and Marketing LLC.

Filed Date: 8/22/18.

Accession Number: 20180822–5114.

Comments Due: 5 p.m. ET 9/12/18.

Docket Numbers: ER18–1445–001.

Applicants: Idaho Power Company.

Description: Compliance filing: Amendment to LGIA, LGIP, SGIA, and SGIP Modifications (Per Order No. 842) Filing to be effective 6/25/2018.

Filed Date: 8/23/18.

Accession Number: 20180823–5053.

Comments Due: 5 p.m. ET 9/13/18.

Docket Numbers: ER18–2158–000; ER18–2159–000.

Applicants: Stillwater Wind, LLC, Crazy Mountain Wind LLC.

Description: Supplement to August 3, 2018 Stillwater Wind, LLC, et al. tariff filings (revised Appendix B–1).

Filed Date: 8/21/18.

Accession Number: 20180821–5090.

Comments Due: 5 p.m. ET 8/31/18.

Docket Numbers: ER18–2281–000.

Applicants: BFE Scheduling, LLC.

Description: Notice of cancellation of MBR Tariff of BFE Scheduling, LLC.

Filed Date: 8/22/18.

Accession Number: 20180822–5125.

Comments Due: 5 p.m. ET 9/12/18.

Docket Numbers: ER18–2282–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2018–08–23_SA 2426 Montana Dakota-Montana Dakota 3rd Rev GIA (G752) to be effective 8/9/2018.

Filed Date: 8/23/18.

Accession Number: 20180823–5060.

Comments Due: 5 p.m. ET 9/13/18.

Docket Numbers: ER18–2283–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2018–08–23_SA 3161 ATC–WPL Project Commitment Agreement (Edgerton) to be effective 10/23/2018.

Filed Date: 8/23/18.

Accession Number: 20180823–5072.

Comments Due: 5 p.m. ET 9/13/18.

Docket Numbers: ER18–2284–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2018–08–23_SA 3162 ATC–WPL Project Commitment Agreement (EPIC) to be effective 10/23/2018.

Filed Date: 8/23/18.

Accession Number: 20180823–5074.

Comments Due: 5 p.m. ET 9/13/18.

Docket Numbers: ER18–2285–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2018–08–23_SA 3163 ATC–WPS Project Commitment Agreement (Plover) to be effective 10/23/2018.

Filed Date: 8/23/18.

Accession Number: 20180823–5079.

Comments Due: 5 p.m. ET 9/13/18.

Docket Numbers: ER18–2286–000.

Applicants: The United Illuminating Company.

Description: § 205(d) Rate Filing: Schedule 20A Service Agreement with H.Q. Energy Services (U.S.) Inc. to be effective 1/1/2018.

Filed Date: 8/23/18.

Accession Number: 20180823–5085.

Comments Due: 5 p.m. ET 9/13/18.

Docket Numbers: ER18–2287–000.

Applicants: Mid-Atlantic Interstate Transmission, LLC, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: MAIT submits four ECSAs, Service Agreement Nos. 5013, 5014, 5015, and 5016 to be effective 10/23/2018.

Filed Date: 8/23/18.

Accession Number: 20180823–5086.

Comments Due: 5 p.m. ET 9/13/18.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES18–59–000.

Applicants: South Carolina Electric & Gas Company, South Carolina Generating Company, Inc.

Description: Application for Authorization Under Federal Power Act Section 204 of South Carolina Electric & Gas Company, et al.

Filed Date: 8/22/18.

Accession Number: 20180822–5117.

Comments Due: 5 p.m. ET 9/12/18.

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 23, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–18710 Filed 8–28–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP18–539–000]

Maritimes & Northeast Pipeline, L.L.C.; Notice of Application

Take notice that on August 10, 2018, Maritimes & Northeast Pipeline, L.L.C. (Maritimes), 5400 Westheimer Court, Houston, Texas 77056–5310, filed an application under section 7(b) and 7(c) of the Natural Gas Act (NGA) and Subpart A of Part 157 of the Commission's rules and regulations to reacquire 7,214 Dth/d of firm capacity on its jointly-owned system from Westbrook, Maine to Dracut, Massachusetts upon the in-service date of Phase III of Portland Natural Gas Transmission System's (Portland) Portland Xpress Project (PXP Project Phase III) and the termination of the Capacity Lease Agreement (Lease Agreement) between Maritimes and Portland, as described in Docket No. CP18–516–000, filed June 29, 2018. Upon the in-service date of the PXP Project Phase III, Maritimes seeks to abandon a portion of its ownership interest in a compressor unit at the Westbrook Compressor Station to Portland, all as more fully described in the application which is on file with the Commission and open to public inspection. The filing may also be

viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to Lisa A. Connolly, Director, Rates and Certificates, Maritimes & Northeast Management Company, LLC, 5400 Westheimer Court, Houston, Texas 77056–5310, or call (713) 627–4102, or email: *Lisa.Connolly@enbridge.com.*

Pursuant to section 157.9 of the Commission's rules (18 CFR 157.9), within 90 days of this Notice, the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

Comment Date: September 13, 2018.

Dated: August 23, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–18711 Filed 8–28–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP18–923–000]

Enable Mississippi River Transmission, LLC; Notice of Technical Conference

Take notice that a technical conference will be held on Wednesday, September 19, 2018 at 10:00 a.m. (Eastern Daylight Time), in Hearing Room 7, at the offices of the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

At the technical conference, the Commission Staff and the parties to the proceeding should be prepared to discuss all issues set for technical conference as established in the July 31, 2018 Order, *Enable Mississippi River Transmission, LLC,* 164 FERC ¶ 61,075. All interested persons are permitted to attend.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an email to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–502–8659 (TTY); or send a fax to 202–208–2106 with the required accommodations.

For more information about this technical conference please contact Brandon Henke at (202) 502–8386 or *brandon.henke@ferc.gov.*

Dated: August 23, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–18709 Filed 8–28–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC18–59–000]

Edison Electric Institute; Notice of Amendment Filing

Take notice that on August 14, 2018, Edison Electric Institute filed an amendment to its March 19, 2018 filed request for approval for electric companies to use Account 439, recently authorized by the Financial Accounting Standards Board.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the

Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comments: 5:00 p.m. Eastern Time on August 28, 2018.

Dated: August 23, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–18707 Filed 8–28–18; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2018–0563; FRL–9982–36]

General Dynamics Information Technology; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that pesticide related information submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be transferred to General Dynamics Information Technology in accordance with the CBI regulations. General Dynamics Information Technology has been awarded multiple contracts to perform work for OPP, and access to this information will enable General Dynamics Information Technology to fulfill the obligations of the contract.

DATES: General Dynamics Information Technology will be given access to this information on or before September 4, 2018.

FOR FURTHER INFORMATION CONTACT: William Northern, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 305–6478 email address: *northern.william@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action applies to the public in general. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2018–0563, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. Contractor Requirements

The Contractor shall provide progress reporting monitoring performance and finances associated with this task order. The Technical and Quality Assurance Progress Report shall provide a general outline of the effort, state the percentage of work completed for the Task Order during the reporting period, and relate it to the overall effort.

This performance work statement (PWS) does not provide specific details on the types of solutions to be offered or the comprehensiveness of any specific solutions. However, the government requires the contractor to offer comprehensive solutions that (1) are based on an understanding of the current EPA IT infrastructure and the systems engineering, remote sensing and GIS environments, (2) provide the scope and breadth of remote sensing and Geographic Information System (GIS) services responsive to present and future needs of EPA, ORD, and partner user communities, (3) ensure an appropriate level of security based on government regulations, agency requirements, and industry best practices, and (4) meet performance levels or metrics associated with specific areas.

The Contractor shall prepare a Quality Management Plan (QMP) describing the technical approach, organizational resources and management controls to be employed to meet the cost, performance and schedule requirements throughout task order execution. The contractor shall employ a program management structure to ensure the efficient execution of all tasks and subtasks, and the capability to report on the status of work performed. The contractor shall use a single point of contact (POC) for all matters regarding project administration and reporting.

This contract will involve no subcontractors.

OPP has determined that the contracts described in this document involve work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this contract. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under FIFRA sections 3, 4, 6, and 7 and under FFDCA sections 408 and 409.

In accordance with the requirements of 40 CFR 2.307(h)(3), the contracts with General Dynamics Information Technology prohibits use of the information for any purpose not specified in these contracts; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the *FIFRA Information Security Manual.* In addition, General Dynamics Information Technology is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to General Dynamics Information Technology until the

requirements in this document have been fully satisfied. Records of information provided to General Dynamics Information Technology will be maintained by EPA Project Officers for these contracts. All information supplied to General Dynamics Information Technology by EPA for use in connection with these contracts will be returned to EPA when General Dynamics Information Technology has completed its work.

Authority: 7 U.S.C. 136 *et seq.;* 21 U.S.C. 301 *et seq.*

Dated: August 14, 2018.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2018–18753 Filed 8–28–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2018–0516; FRL–9981–64]

Agency Information Collection Activities; Proposed Extension of an Existing Collection (EPA ICR No. 0586.14); Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), this document announces that EPA is planning to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB). The ICR, entitled: ''TSCA Section 8(a) Preliminary Assessment Information Rule (PAIR)'' and identified by EPA ICR No. 0586.14 and OMB Control No. 2070–0054, represents the renewal of an existing ICR that is scheduled to expire on April 30, 2019. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection that is summarized in this document. The ICR and accompanying material are available in the docket for public review and comment.

DATES: Comments must be received on or before October 29, 2018.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2018–0516, by one of the following methods:

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

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

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Andrea Mojica, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–0599; email address: *mojica.andrea@epa.gov.*

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

SUPPLEMENTARY INFORMATION:

I. What information is EPA particularly interested in?

Pursuant to PRA section 3506(c)(2)(A) (44 U.S.C. 3506(c)(2)(A)), EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

II. What information collection activity or ICR does this action apply to?

Title: TSCA Section 8(a) Preliminary Assessment Information Rule (PAIR).

ICR number: EPA ICR No. 0586.14.

OMB control number: OMB Control No. 2070–0054.

ICR status: This ICR is currently scheduled to expire on April 30, 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. The OMB control numbers for EPA's regulations in title 40 of the Code of Federal Regulations (CFR), after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers for certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: On June 22, 1982, EPA promulgated the generic section 8(a) PAIR (40 CFR part 712) under the Toxic Substances Control Act (TSCA). EPA uses PAIR to collect information to help identify, assess, and manage human health and environmental risks from chemical substances, mixtures and categories of chemical substances and mixtures. PAIR requires chemical manufacturers (including importers) to complete and submit standardized information about production, use, or exposure-related data to help evaluate the potential for human health and environmental risks caused by the manufacture of identified chemical substances or mixtures. The Frank R. Lautenberg Chemical Safety for the 21st Century Act amending TSCA was enacted on June 22, 2016; however, the underlying authority for a Section 8(a) PAIR rule was not modified. While the Agency has not issued a Section 8(a) PAIR rule since 2006, given the new requirement under amended TSCA Section 6(b)(1) to prioritize chemicals for risk evaluation, it is possible that the Agency may start requesting section 8(a) reporting more frequently.

EPA or other federal agencies (*e.g.,* the agencies that are part of the Interagency Testing Committee (ITC) as authorized under TSCA section 4(e)) can identify chemicals for a TSCA section 8(a) PAIR expediated rulemaking that have a justifiable need for production, use, or exposure-related data. In instances, such as when EPA must reach a decision on whether testing of a chemical is necessary, the information that EPA receives from a PAIR report may

contribute to satisfying EPA's information needs.

This information collection activity also covers certain specific chemical testing and reporting requirements under Subpart B of 40 CFR part 766 that are in part very similar to the PAIR requirements. The Agency rarely receives submissions of the information required by 40 CFR 766. EPA received less than five submissions over the course of the last OMB approval for this aspect of the information collection.

The dibenzo-para-dioxin/dibenzofuran regulations at 40 CFR part 766 require that any person who manufactures, imports, or processes a chemical substance listed at 40 CFR 766.25 test that chemical substance and submit appropriate information to EPA according to the schedules described at 40 CFR 766.35. Persons who commence manufacture, import, or processing of a chemical substance listed at 40 CFR 766.25 must submit a letter of intent to test or an exemption application within 60-days of starting any of those activities. Each person who is manufacturing or processing a chemical listed in 40 CFR 766.25 must submit a protocol for testing according to the schedule at 40 CFR 766.35(a)(2). Persons who manufacture or import a chemical substance listed under 40 CFR 766.25 must report positive test results, using the Dioxin/Furan Report Form (EPA Form 7710–51), of all existing test data that show that chemical substance has been tested for the presence of halogenated dibenzodioxins/halogenated dibenzofurans (HDDs/HDFs), as well as any health and safety studies for the chemical substance, as defined in the regulation, no later than 90 days after the date of submission of the positive test result. Additionally, any manufacturer or importer of a chemical substance listed in 40 CFR 766.25 in possession of unpublished health and safety studies on HDDs/HDFs is required to submit copies of such studies to EPA, in accordance with certain provisions of 40 CFR 716, no later than 90 days after the person first manufactures or imports the chemical substance.

Burden statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 31 hours per response. Burden is defined in 5 CFR 1320.3(b).

The ICR, which is available in the docket along with other related materials, provides a detailed explanation of the collection activities and the burden estimate that is only briefly summarized here:

Respondents/Affected Entities: Entities potentially affected by this ICR are companies that manufacture, import, or process chemical substances or mixtures.

Estimated total annual number of potential respondents: 1.

Frequency of response: On occasion.

Estimated total annual average number of responses for each respondent: 1.

Estimated total annual burden hours: 31 hours.

Estimated total annual costs: $2,364. This includes an estimated burden cost of $2,364 and an estimated cost of $0 for capital investment or maintenance and operational costs.

III. Are there changes in the estimates from the last approval?

There is a decrease of 1 hour in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This decrease reflects a correction in the ICR renewal which eliminates the burden from trade name notification by processors (included previously in error) and the increased CBI substantiation requirements in the 2016 Lautenberg Act amendments to TSCA. This change is an adjustment.

IV. What is the next step in the process for this ICR?

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 pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** document pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: August 20, 2018.

Charlotte Bertrand,

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

[FR Doc. 2018–18752 Filed 8–28–18; 8:45 am]

BILLING CODE 6560–50–P

EXPORT–IMPORT BANK

[Public Notice: 2018–3015]

Agency Information Collection Activities: Final Collection; Comment Request

AGENCY: Export-Import Bank of the United States.

ACTION: Submission for OMB review and comments request.

SUMMARY: The Export-Import Bank of the United States (EXIM), as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

This form is to be completed by EXIM borrowers as required under EXIM Credit Guarantee Facility (CGF) transactions in conjunction with a borrower's request for disbursement for U.S. goods and services. It is used to summarize disbursement documents submitted with a borrower's request and to calculate the requested financing amount. It will enable EXIM lenders to identify the specific details of the amount of disbursement requested for approval to ensure that the financing request is complete and in compliance with EXIM's disbursement requirements.

DATES: Comments should be received on or before September 28, 2018 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *WWW.REGULATIONS.GOV* (EIB 18–02) or by mail to Office of Information and Regulatory Affairs, 725 17th Street NW, Washington, DC 20038 Attn: EXIM form (EIB 18–02). The information collection tool can be reviewed at: *https://www.exim.gov/sites/default/files/pub/pending/eib18-02_itemized_statement_of_payments-us_costs_for_exim_cgf_-_final.xlsx.*

SUPPLEMENTARY INFORMATION:

Titles and Form Number: EIB 18–02 Itemized Statement of Payments—US Costs for EXIM Credit Guarantee Facility.

OMB Number: XXXX–XXXX.

Type of Review: NEW.

Need and Use: The information collected will assist in determining compliance of disbursement requests for U.S. goods and services submitted to EXIM lenders under CGF transactions.

Affected Public: This form affects EXIM borrowers involved in financing U.S. goods and services under CGF transactions.

Annual Number of Respondents: 12.

Estimated Time per Respondent: 150 minutes.

Annual Burden Hours: 30 hours.

Frequency of Reporting or Use: As needed.

Government Expenses: None.

This form is submitted by the borrower to the CGF lender for review. The lender reports information regarding the disbursement electronically to EXIM using OMB Number 3048–0046 CGF (EIB 12–02) Disbursement Approval Request Report.

Bassam Doughman,

IT Specialist.

[FR Doc. 2018–18698 Filed 8–28–18; 8:45 am]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK

[Public Notice: 2018–3016]

Agency Information Collection Activities: Final Collection; Comment Request

AGENCY: Export-Import Bank of the United States.

ACTION: Submission for OMB review and comments request.

SUMMARY: The Export-Import Bank of the United States (EXIM), as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

This form is to be completed by EXIM borrowers as required under EXIM Credit Guarantee Facility (CGF) transactions in conjunction with a borrower's request for disbursement for local cost goods and services. It is used to summarize disbursement documents submitted with a borrower's request and to calculate the requested financing amount. It will enable EXIM lenders to identify the specific details of the amount of disbursement requested for approval to ensure that the financing request is complete and in compliance with EXIM's disbursement requirements.

DATES: Comments should be received on or before September 28, 2018 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *WWW.REGULATIONS.GOV* (EIB 18–03) or by mail to Office of Information and Regulatory Affairs, 725 17th Street NW, Washington, DC 20038, Attn: EXIM form (EIB 18–03). The information collection tool can be reviewed at: *https://www.exim.gov/sites/default/files/pub/pending/eib18-03_itemized_statement_of_payments-local_costs_for_exim_cgf_-_final.xlsx.*

SUPPLEMENTARY INFORMATION:

Titles and Form Number: EIB 18–03 Itemized Statement of Payments—Local Costs for EXIM Credit Guarantee Facility.

OMB Number: XXXX–XXXX.

Type of Review: NEW.

Need and Use: The information collected will assist in determining compliance of disbursement requests for local cost goods and services submitted to EXIM lenders under CGF transactions.

Affected Public: This form affects EXIM borrowers involved in financing local cost goods and services under CGF transactions.

Annual Number of Respondents: 6.

Estimated Time per Respondent: 75 minutes.

Annual Burden Hours: 7.5 hours.

Frequency of Reporting or Use: As needed.

Government Expenses: None.

This form is submitted by the borrower to the CGF lender for review. The lender reports information regarding the disbursement electronically to EXIM using OMB Number 3048–0046 CGF (EIB 12–02) Disbursement Approval Request Report.

Bassam Doughman,

IT Specialist.

[FR Doc. 2018–18688 Filed 8–28–18; 8:45 am]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK

[Public Notice: 2018–3017]

Agency Information Collection Activities: Final Collection; Comment Request

AGENCY: Export-Import Bank of the United States.

ACTION: Submission for OMB review and comments request.

SUMMARY: The Export-Import Bank of the United States (EXIM), as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

This form is to be completed by EXIM borrowers as required under certain EXIM long-term guarantee and direct loan transactions in conjunction with a borrower's request for disbursement for local cost goods and services. It is used to summarize disbursement documents submitted with a borrower's request and to calculate the requested financing amount. It will enable EXIM to identify the specific details of the amount of disbursement requested for approval to ensure that the financing request is complete and in compliance with EXIM's disbursement requirements. This form will be uploaded into an electronic disbursement portal.

DATES: Comments should be received on or before September 28, 2018 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *WWW.REGULATIONS.GOV* (EIB 18–05) or by mail to Office of Information and Regulatory Affairs, 725 17th Street NW, Washington, DC 20038 Attn: EXIM form (EIB 18–05). The information collection tool can be reviewed at: *https://www.exim.gov/sites/default/files/pub/pending/eib18-05_itemized_statement_of_payments-local_cost_form_-_final.xlsx.*

SUPPLEMENTARY INFORMATION:

Titles and Form Number: EIB 18–05 Itemized Statement of Payments Long-term Guarantee and Direct Loan—Local Costs.

OMB Number: XXXX–XXXX.

Type of Review: NEW.

Need and Use: The information collected will assist in determining compliance of disbursement requests for local cost goods and services submitted to EXIM through an electronic disbursement portal under certain long-term guarantee and direct loan transactions.

Affected Public: This form affects EXIM borrowers involved in financing local cost goods and services under certain long-term guarantee and direct loan transactions.

Annual Number of Respondents: 25.

Estimated Time per Respondent: 30 minutes.

Annual Burden Hours: 12.5 hours.

Frequency of Reporting or Use: As needed.

Government Expenses:

Reviewing Time per Year: 12.5 hours.

Average Wages per Hour: $42.50.

Average Cost per Year: $531.25 (time*wages).

Benefits and Overhead: 20%.

Total Government Cost: $637.50.

Bassam Doughman,

IT Specialist.

[FR Doc. 2018–18697 Filed 8–28–18; 8:45 am]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK

[Public Notice: 2018–3016]

Agency Information Collection Activities: Final Collection; Comment Request

AGENCY: Export-Import Bank of the United States.

ACTION: Submission for OMB review and comments request.

SUMMARY: The Export-Import Bank of the United States (EXIM), as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

This form is to be completed by EXIM borrowers as required under certain EXIM long-term guarantee and direct loan transactions in conjunction with a borrower's request for disbursement for U.S. goods and services. It is used to summarize disbursement documents submitted with a borrower's request and to calculate the requested financing amount. It will enable EXIM to identify the specific details of the amount of disbursement requested for approval to ensure that the financing request is complete and in compliance with EXIM's disbursement requirements. This form will be uploaded into an electronic disbursement portal.

DATES: Comments should be received on or before September 28, 2018 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *WWW.REGULATIONS.GOV* (EIB 18–04) or by mail to Office of Information and Regulatory Affairs, 725 17th Street NW, Washington, DC 20038 Attn: EXIM form (EIB 18–04). The information collection tool can be reviewed at: *https://www.exim.gov/sites/default/files/pub/pending/eib18-04_itemized_statement_of_payments-us_costs_form_-_final.xlsx.*

SUPPLEMENTARY INFORMATION:

Titles and Form Number: EIB 18–04 Itemized Statement of Payments—Long-term Guarantees and Direct Loans—US Costs.

OMB Number: XXXX–XXXX.

Type of Review: NEW.

Need and Use: The information collected will assist in determining compliance of disbursement requests for U.S. goods and services submitted to EXIM through an electronic disbursement portal under certain long-term guarantee and direct loan transactions.

Affected Public: This form affects EXIM borrowers involved in financing U.S. goods and services under certain long-term guarantee and direct loan transactions.

Annual Number of Respondents: 75.

Estimated Time per Respondent: 150 minutes.

Annual Burden Hours: 187.5 hours.

Frequency of Reporting or Use: As needed.

Government Expenses:

Reviewing Time per Year: 187.5 hours.

Average Wages per Hour: $42.50.

Average Cost per Year: $7,968.75 (time*wages).

Benefits and Overhead: 20%.

Total Government Cost: $9,562.50.

Bassam Doughman,

IT Specialist.

[FR Doc. 2018–18696 Filed 8–28–18; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0281]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before October 29, 2018. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email: *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0281.

Title: Section 90.651, Supplemental Reports Required of Licensees Authorized Under this Subpart.

Form Number: N/A.

Type of Review: Extension of a currently approved collection. Business or other for-profit entities, not-for-profit institutions and state, local or tribal government.

Number of Respondents and Responses: 190 respondents; 346 responses.

Estimated Time per Response: .166 hours (10 minutes).

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

Total Annual Burden: 57 hours.

Total Annual Cost: No cost.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: In a Report and Order (FCC 99–9, released February 19, 1999) in WT Docket 97–153, the Commission, under section 90.651, adopted a revised time frame for reporting the number of mobile units placed in operation from eight months to 12 months of the grant date of their license. The radio facilities addressed in this subpart of the rules are allocated on and governed by regulations designed to award facilities on a need basis determined by the number of mobile units served by each base station. This is necessary to avoid frequency hoarding by applicants. This rule section requires licensees to report the number of mobile units served via FCC

Form 601. The Commission is extending this reporting requirement for a period of three years in the Office of the Management and Budget's (OMB) inventory.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2018–18694 Filed 8–28–18; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0270]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before October 29, 2018. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email: *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0270.

Title: Section 90.443, Content of Station Records.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 52,383 respondents; 52,383 responses.

Estimated Time per Response: .25 hours.

Frequency of Response: Recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in 47 U.S.C. Section 303(j), as amended.

Total Annual Burden: 13,096 hours.

Annual Cost Burden: No cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: The information collection requirements contained under Section 90.443(b) require that each licensee of a station shall maintain records for all stations by providing the dates and pertinent details of any maintenance performed on station equipment, along with the name and address of the service technician who did the work. If all maintenance is performed by the same technician or service company, the name and address need be entered only once in the station records.

The information collection requirements under Section 90.443(c) require that at least one licensee participating in the cost arrangement must maintain cost sharing records.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2018–18695 Filed 8–28–18; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0463]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before October 29, 2018. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email: *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0463.

Title: Telecommunications Relay Services and Speech-to-Speech Services

for Individuals With Hearing and Speech Disabilities, CG Docket No. 03–123.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit; Individuals or household; State, Local and Tribal Government.

Number of Respondents and Responses: 5,072 respondents; 7,314 responses.

Estimated Time per Response: 0.5 hours (30 minutes) to 80 hours.

Frequency of Response: Annually, monthly, on occasion, and one-time reporting requirements; Recordkeeping and Third-Party Disclosure requirements.

Obligation to Respond: Required to obtain or retain benefit. The statutory authority for the information collection requirements is found at section 225 of the Communications Act, 47 U.S.C. 225. The law was enacted on July 26, 1990, as Title IV of the ADA, Public Law 101–336, 104 Stat. 327, 366–69.

Total Annual Burden: 12,342 hours.

Total Annual Cost: $10,800.

Nature and Extent of Confidentiality: Confidentiality is an issue to the extent that individuals and households provide personally identifiable information, which is covered under the FCC's updated system of records notice (SORN), FCC/CGB–1, ''Informal Complaints, Inquiries, and Requests for Dispute Assistance.'' As required by the Privacy Act, 5 U.S.C. 552a, the Commission also published a SORN, FCC/CGB–1 ''Informal Complaints, Inquiries, and Requests for Dispute Assistance,'' in the **Federal Register** on August 15, 2014 (79 FR 48152) which became effective on September 24, 2014.

Privacy Impact Assessment: The FCC completed a Privacy Impact Assessment (PIA) on June 28, 2007. It may be reviewed at *https://www.fcc.gov/general/privacy-act-information#pia.* The Commission is in the process of updating the PIA to incorporate various revisions to it as a result of revisions to the SORN.

Needs and Uses

On December 21, 2001, the Commission released the *2001 TRS Cost Recovery Order,* document FCC 01–371, published at 67 FR 4203, January 29, 2002, in which the Commission:

(1) Directed the Interstate Telecommunications Relay Services (TRS) Fund (TRS Fund) administrator to continue to use the average cost per minute compensation methodology for the traditional TRS compensation rate;

(2) required TRS providers to submit certain projected TRS-related cost and demand data to the TRS Fund administrator to be used to calculate the rate; and

(3) directed the TRS Fund administrator to expand its form for providers to itemize their actual and projected costs and demand data, and to include specific sections to capture speech-to-speech (STS) and video relay service (VRS) costs and minutes of use.

In 2003, the Commission released the *2003 Second Improved TRS Order,* published at 68 FR 50973, August 25, 2003, which among other things required that TRS providers offer certain local exchange carrier (LEC)-based improved services and features where technologically feasible, including a speed dialing requirement which may entail voluntary recordkeeping for TRS providers to maintain a list of telephone numbers. *See also* 47 CFR 64.604(a)(3)(vi)(B).

In 2007, the Commission released the *Section 225/255 VoIP Report and Order,* published at 72 FR 43546, August 6, 2007, extending the disability access requirements that apply to telecommunications service providers and equipment manufacturers under 47 U.S.C. 225, 255 to interconnected voice over internet protocol (VoIP) service providers and equipment manufacturers. As a result, under rules implementing section 225 of the Act, interconnected VoIP service providers are required to publicize information about telecommunications relay services (TRS) and 711 abbreviated dialing access to TRS. *See also* 47 CFR 64.604(c)(3).

In 2007, the Commission also released the *2007 Cost Recovery Report and Order and Declaratory Ruling,* published at 73 FR 3197, January 17, 2008, in which the Commission:

(1) Adopted a new cost recovery methodology for interstate traditional TRS and interstate STS based on the Multi-state Average Rate Structure (MARS) plan, under which interstate TRS compensation rates are determined by weighted average of the states' intrastate compensation rates, and which includes for STS additional compensation approved by the Commission for STS outreach;

(2) requires STS providers to file a report annually with the TRS Fund administrator and the Commission on their specific outreach efforts directly attributable to the additional compensation approved by the Commission for STS outreach.

(3) adopted a new cost recovery methodology for interstate captioned telephone service (CTS), as well as internet Protocol captioned telephone service (IP CTS), based on the MARS plan;

(4) adopted a cost recovery methodology for internet Protocol (IP) Relay based on price caps;

(5) adopted a cost recovery methodology for VRS that adopted tiered rates based on call volume;

(6) clarified the nature and extent that certain categories of costs are compensable from the Fund; and

(7) addressed certain issues concerning the management and oversight of the Fund, including prohibiting financial incentives offered to consumers to make relay calls.

In 2018, the Commission released the *IP CTS Modernization Order,* published at 83 FR 30082, June 27, 2018, in which the Commission:

(1) Determined that it would transition the methodology for IP CTS cost recovery from the MARS plan to cost-based rates and adopted interim rates; and

(2) added two cost reporting requirements for IP CTS providers: (i) In annual cost data filings and supplementary information provided to the TRS Fund administrator, IP CTS providers that contract for the supply of services used in the provision of TRS, shall include information about payments under such contracts, classified according to the substantive cost categories specified by the TRS Fund administrator; and (ii) in the course of an audit or otherwise upon demand, IP CTS providers must make available any relevant documentation. 47 CFR 64.604(c)(5)(iii)(D)(*1*), (*6*).

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2018–18690 Filed 8–28–18; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0233]

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to

take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before September 28, 2018. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain*>, (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

OMB Control Number: 3060–0233.

Title: Part 54—High-Cost Loop Support Reporting to National Exchange Carrier Association (NECA).

Form Number(s): FCC Form 507, FCC Form 508 and FCC Form 509.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 1,095 respondents; 3,616 responses.

Estimated Time per Response: 1–22 hours.

Frequency of Response: On occasion and annual reporting requirements, recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151–154, 214, 218–220, 221(c), 254, and 303(r).

Total Annual Burden: 41,070 hours. Total Annual Cost: No Cost. Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: No assurance of confidentiality has been given regarding the information. However, respondents may request materials or information submitted to the Commission be withheld from public inspection under 47 CFR 0.459 of the FCC's rules.

Needs and Uses: In order to determine which carriers are entitled to universal service support, all rate-of-return regulated (rate-of-return) incumbent local exchange carriers (LECs) must provide the National Exchange Carrier Association (NECA) with the loop cost and loop count data required by section 54.1305 for each of its study areas and, if applicable, for each wire center as that term is defined in 47 CFR part 54. See 47 CFR 54.1305 and 54.5. The loop cost and loop count information is to be filed annually with NECA by July 31st of each year, and may be updated occasionally pursuant to section 54.1306. See 47 CFR 54.1306. Pursuant to section 54.1307, the information filed on July 31st of each year will be used to calculate universal service support for each study area and is filed by NECA with the Commission on October 1 of each year. See 47 CFR 54.1307. An incumbent LEC is defined as a carrier that meets the definition of ''incumbent local exchange carrier'' in section 51.5 of the Commission's rules. See 47 CFR 51.5.

In March 2016, the Commission adopted the *Rate-of-Return Reform Order* to continue modernizing the universal service support mechanisms for rate-of-return carriers. *Connect America Fund et al.,* WC Docket No. 10–90 et al., Report and Order, Order and Order on Reconsideration and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087 (2016) (*Rate-of-Return Reform Order and Further Notice*). The *Rate-of-Return Reform Order* replaces the Interstate Common Line Support (ICLS) mechanism with the Connect America Fund—Broadband Loop Support (CAF–BLS) mechanism. While ICLS supported only lines used to provide traditional voice service (including voice service bundled with broadband service), CAF–BLS also supports consumer broadband-only loops. FCC Forms 507, 508, and 509 include additional line counts, forecasted cost and revenues, and actual cost and revenue data associated with consumer broadband-only loops necessary for the calculation of CAF–BLS. We propose to move the requirements associated with FCC Form 507, FCC Form 508, FCC Form 509 under OMB Control Number 3060–0986 into this collection.

The Commission therefore proposes to revise this information collection. Any increased burdens are associated with the moving of these requirements and forms into this information collection.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2018–18693 Filed 8–28–18; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary by email at *Secretary@fmc.gov,* or by mail, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's website (*www.fmc.gov*) or by contacting the Office of Agreements at (202)–523–5793 or *tradeanalysis@fmc.gov*.

Agreement No.: 001941–004.

Agreement Name: Baltimore Marine Terminal Association.

Parties: Balterm LLC; Ceres Marine Terminals Inc.; Mid-Atlantic Terminal, LLC; and Ports America Chesapeake, LLC.

Filing Party: JoAnne Zawitoski; Baltimore Marine Terminal Association.

Synopsis: The amendment updates the membership of the Agreement and restates the Agreement.

Proposed Effective Date: 10/6/2018.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/16271.

Agreement No.: 201267.

Agreement Name: CMA CGM/COSCO Shipping Slot Exchange Agreement China—U.S. West Coast.

Parties: CMA CGM S.A. and COSCO Shipping Lines Co., Ltd.

Filing Party: Eric Jeffrey; Nixon Peabody.

Synopsis: The Agreement authorizes the parties to exchange slots on their respective services between ports in China (including Hong Kong) and ports on the U.S. West Coast.

Proposed Effective Date: 8/20/2018.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/15267.

Agreement No.: 201268.

Agreement Name: Kyowa Shipping Company (Kyowa)/China Navigation Company (CNCo) Pacific—Asia Slot Charter Agreement.

Parties: The China Navigation Company Pte Ltd. and Kyowa Shipping Company, Ltd.

Filing Party: Conte Cicala; Clyde & Co. US LLP.

Synopsis: The Agreement authorizes the parties to charter slots to each other in other services between Asia and ports in the South Pacific.

Proposed Effective Date: 10/5/2018.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/15268.

Agreement No.: 201269.

Agreement Name: Seaboard/Crowley Miami & Kingston Space Charter Agreement.

Parties: Seaboard Marine, Ltd. and Crowley Caribbean Services, LLC.

Filing Party: Wayne Rohde; Cozen O'Connor.

Synopsis: The Agreement authorizes Seaboard to charter space to Crowley in the trade between Miami, FL and Kingston, Jamaica.

Proposed Effective Date: 10/6/2018.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/15289.

Dated: August 24, 2018.

Rachel Dickon,

Secretary.

[FR Doc. 2018–18748 Filed 8–28–18; 8:45 am]

BILLING CODE 6731–AA–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 10 of the Home Owners' Loan Act (12 U.S.C. 1467a) (HOLA) and Regulation LL, (12 CFR part 238) 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 § 238.53 or § 238.54 of Regulation LL (12 CFR 225.53 or 238.54). 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 10(c)(4)(B) of the HOLA 12 U.S.C. 1467a(c)(4)(B).

Unless otherwise noted, comments regarding the notices must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 14, 2018.

A. Federal Reserve Bank of Minneapolis (Mark A. Rauzi, Vice President), 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Farrar Beresford Bancorporation Inc. Irrevocable Trust and Beresford Bancorporation, Inc., both of Britton, South Dakota;* to acquire voting shares of Lloyd's Plan SD, Inc., Britton, South Dakota, and thereby act as a broker or agent for the sale of credit-related insurance and engage in consumer lending activities pursuant to section 238.53(b)(5) and 238.54(a) of Regulation LL.

Additionally, Farrar Beresford Bancorporation, Inc. Irrevocable Trust and Beresford Bancorporation, Inc. have applied for retroactive approval to engage in general lending activities, including small business and agricultural loans, pursuant to section 238.54(a) of Regulation LL.

Board of Governors of the Federal Reserve System, August 23, 2018.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2018–18630 Filed 8–28–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0035; Docket No. 2018–0003; Sequence No. 7]

Information Collection; Claims and Appeals

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 claims and appeals.

DATES: Submit comments on or before October 29, 2018.

ADDRESSES: Submit comments identified by Information Collection 9000–0035, Claims and Appeals, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0035, Claims and Appeals''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and

''Information Collection 9000–0035, Claims and Appeals'' on your attached document.

• *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405. ATTN: Ms. Mandell/IC 9000–0035, Claims and Appeals.

Instructions: Please submit comments only and cite Information Collection 9000–0035, Claims and Appeals, in all correspondence related to this collection. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *http://www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Mr. Charles Gray, Procurement Analyst, Federal Acquisition Policy Division, GSA, 703–795–6328 or via email at *charles.gray@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

It is the Government's policy to try to resolve all contractual issues by mutual agreement at the contracting officer's level without litigation. Reasonable efforts should be made to resolve controversies prior to submission of a contractor's claim. The Contract Disputes Act of 1978 (41 U.S.C. 7103) requires that claims exceeding $100,000 must be accompanied by a certification that (1) the claim is made in good faith; (2) supporting data are accurate and complete; and (3) the amount requested accurately reflects the contract adjustment for which the contractor believes the Government is liable. The information, as required by FAR clause 52.233–1, Disputes, is used by a contracting officer to decide or resolve the claim. Contractors may appeal the contracting officer's decision by submitting written appeals to the appropriate officials.

B. Annual Reporting Burden

Respondents: 4,500.
Responses per Respondent: 3.
Annual Responses: 13,500.
Hours per Response: 1.
Total Burden Hours: 13,500.

C. Public Comments

A 60-day notice published in the **Federal Register** at 83 FR 22687, on May 16, 2018. No comments were received. Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; 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. 9000–0035, Claims and Appeals, in all correspondence.

Dated: August 22, 2018.

William F. Clark,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2018–18751 Filed 8–28–18; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–18–0960; Docket No. CDC–2018–0074]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Epidemiologic Study of Health Effects Associated With Low Pressure Events in Drinking Water Distribution Systems.

DATES: CDC must receive written comments on or before October 29, 2018.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2018–0074 by any of the following methods:

• *Federal eRulemaking Portal: Regulations.gov.* Follow the instructions for submitting comments.

• *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov.*

Please note: Submit all comments through the Federal eRulemaking portal (regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

5. Assess information collection costs.

Proposed Project

Epidemiologic Study of Health Effects Associated With Low Pressure Events in Drinking Water Distribution Systems—Reinstatement With Change—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

In the United States (U.S.), drinking water distribution systems are designed to deliver safe, pressurized drinking water to our homes, hospitals, schools and businesses. However, the water distribution infrastructure is 50–100 years old in much of the U.S. and an estimated 240,000 water main breaks occur each year. Failures in the distribution system such as water main breaks, cross-connections, back-flow, and pressure fluctuations can result in potential intrusion of microbes and other contaminants that can cause health effects, including acute gastrointestinal and respiratory illness.

Approximately 200 million cases of acute gastrointestinal illness occur in the U.S. each year, but we lack reliable data to assess how many of these cases are associated with drinking water. Further, data are even more limited on the human health risks associated with exposure to drinking water during and after the occurrence of low pressure events (such as water main breaks) in drinking water distribution systems. Studies in both Norway and Sweden found that people exposed to low pressure events in the water distribution system had a higher risk for gastrointestinal illness. A similar study is needed in the United States.

The purpose of this data collection is to conduct an epidemiologic study in the U.S. to assess whether individuals exposed to low pressure events in the water distribution system are at an increased risk for acute gastrointestinal or respiratory illness. This study would be, to our knowledge, the first U.S. study to systematically examine the association between low pressure events and acute gastrointestinal and respiratory illnesses. Study findings will inform the Environmental Protection Agency (EPA), CDC, and other drinking water stakeholders of the potential health risks associated with low pressure events in drinking water distribution systems and whether additional measures (*e.g.,* new standards, additional research, or policy development) are needed to reduce the risk for health effects associated with low pressure events in the drinking water distribution system.

We will conduct a cohort study among households that receive water from seven water utilities across the U.S.

The water systems will be geographically diverse and will include both chlorinated and chloraminated systems. These water utilities will provide information about low pressure events that occur during the study period using a standardized form (approximately 13 events per utility). Utilities will provide address listings of households in areas exposed to the low pressure event and comparable households in an unexposed area to CDC staff, who will randomly select participants and send them an introductory letter and questionnaire. Consenting household respondents will be asked about symptoms and duration of any recent gastrointestinal or respiratory illness, tap water consumption, and other exposures including international travel, daycare attendance or employment, animal contacts, and recreational water exposures. Study participants may choose between two methods of survey response: A mail-in paper survey and a web-based survey.

Participation in this study will be voluntary. No financial compensation will be provided to study participants. The study duration is anticipated to last 78 months. An estimated 7,900 individuals will be contacted and we anticipate 6,320 utility customers (18 years of age or older) will consent to participate in this study. The total estimated annualized hours associated with this study reinstatement is expected to be 199 hours per year. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Water Utility customer	Paper-based questionnaire	240	1	(12/60)	48
	Web-based questionnaire	160	1	(12/60)	32
Water utility maintenance worker	LPE form, ultrafilter and grab samples	5	3	(145/60)	36
	LPE form, grab samples	5	2	(45/60)	8
Water Utility Environmental Engineer	Line listings	5	5	2	50
Water Utility Billing clerk	Line listings	5	5	1	25
Total					199

Jeffrey M. Zirger,

Acting Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2018–18699 Filed 8–28–18; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Request for Certification for Adult Victims of Human Trafficking.

OMB No.: 0970–0454.

Description: The Trafficking Victims Protection Act, Public Law 106–386 (TVPA) requires the Department of Health and Human Services (HHS) to certify adult alien (''foreign'') victims of severe forms of trafficking in persons (''human trafficking'') who are willing to assist law enforcement in the investigation and prosecution of human trafficking, unless unable to cooperate due to physical or psychological trauma, and who have either made a bona fide application for T nonimmigrant status that has not been denied or been granted Continued Presence (CP) from the U.S. Department of Homeland Security (DHS). The Office on Trafficking in Persons (OTIP) within the HHS Administration for Children and Families issues HHS Certification Letters that grant adult foreign victims of human trafficking eligibility for federal and state benefits and services to the same extent as refugees.

In general, OTIP initiates the certification process when it receives a notice from DHS that DHS has granted a foreign victim of trafficking CP or T nonimmigrant status, or has determined an application for T nonimmigrant status is bona fide. To issue HHS Certification Letters, it is necessary for OTIP to collect information from a victim, or a victim's representative, such as an attorney, case manager, or law enforcement victim specialist, including an address to send the HHS Certification Letter.

OTIP will ask if the victim is in need of a case management services and the current location (city, state) of the victim, and refer the victim to an appropriate service provider in his or her area, if requested. OTIP will also ask about the victim's primary language and urgent concerns, such as medical care or housing, and transmit this information to the service provider with the victim's consent.

Finally, OTIP collects information, such as the victim's sex and the type of human trafficking the victim experienced, to provide to Congress in an annual report on U.S. Government activities to combat trafficking that is prepared by the U.S. Department of Justice. Congress requires HHS and other appropriate Federal agencies to report, at a minimum, information on the number of persons who received benefits or other services under subsections (b) and (f) of section 7105 of Title 22 of the U.S. Code in connection with programs or activities funded or administered by HHS. HHS includes in these annual reports additional aggregate information that it collects about the victims when assisting each victim to obtain certification or eligibility.

Previously, OTIP collected HHS Certification information via email. However, as email is not a secure means of transfer, OTIP developed the form to facilitate the submission of consistent information and improve program reporting. The provider will fill out the form, and return the form via password protected email or encryption. OTIP will store this information and any other details regarding the victim's case in OTIP's secure database. Other details maintained in the victim's file may include OTIP staff actions, referrals, and notes regarding the victim's interest in receiving services. Maintaining victim records within OTIP's database will ensure efficient service delivery for victims, allow OTIP staff to track victims' progress toward certification, verify their eligibility for benefits, and organize information for reporting aggregate data to Congress.

Respondents: Nongovernmental entities providing social or legal services, or victim/survivors of trafficking may use this form to submit a request for certification. The use of this form is optional; the victim or his/her representative has the option to make a request for certification via telephone.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Trafficking Victims Tracking System form	800	1	.25	200

Estimated Total Annual Burden Hours: 200.

In compliance with the requirements of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chap 35), the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 33 C Street SW, Washington, DC 20201. Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov*. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2018–18760 Filed 8–28–18; 8:45 am]

BILLING CODE 4184–47–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–3208]

DHL Laboratories Inc.; Proposal To Withdraw Approval of a New Drug Application for Dextrose 5% Injection in Plastic Container; Opportunity for a Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration's (FDA or Agency) Center for Drug Evaluation and Research (CDER) is proposing to withdraw approval of a new drug application (NDA) for Dextrose 5% Injection in Plastic Container, 5 grams (g)/100 milliliters (mL), held by DHL Laboratories Inc., 155 Medical Science Dr., Union, SC 23979, and is announcing an opportunity for the holder of the NDA to request a hearing on this proposal. The basis for the proposal is that the holder of the NDA has repeatedly failed to file required annual reports for the NDA.

DATES: DHL Laboratories Inc. may submit a request for a hearing by September 28, 2018. Submit all data, information, and analyses upon which the request for a hearing relies by October 29, 2018. Submit electronic or written comments by October 29, 2018.

ADDRESSES: The request for a hearing may be submitted by DHL Laboratories Inc. by either of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments to submit your request for a hearing. Comments submitted electronically to *https://www.regulations.gov,* including any attachments to the request for a hearing, will be posted to the docket unchanged.

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.
- Because your request for a hearing will be made public, you are solely responsible for ensuring that your request does not include any confidential information that you or a third part 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. The request for a hearing must include the Docket No. FDA–2018–N–3208 for ''DHL Laboratories Inc.; Proposal to Withdraw Approval of a New Drug Application for Dextrose 5% Injection in Plastic Container; Opportunity for a Hearing.'' The request for a hearing will be placed in the docket and publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

DHL Laboratories Inc. may submit all data and analyses upon which the request for a hearing relies in the same manner as the request for a hearing except as follows:

- Confidential Submissions—To submit any data analyses with confidential information that you do not wish to be made publicly available, submit your data and analyses only as a written/paper submission. You should submit two copies total of all data and analyses. 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 any decisions on this matter. 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* or available at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday. Submit both copies to the Dockets Management Staff. Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law.

Comments Submitted by Other Interested Parties: For all comments submitted by other interested parties, submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

Instructions: All submissions received must include the Docket No. FDA–2018–N–3208 for ''DHL Laboratories Inc.; Proposal to Withdraw Approval of a New Drug Application for Dextrose 5% Injection in Plastic Container; Opportunity for a Hearing.'' 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: Florine P. Purdie, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6248, Silver Spring, MD 20993–0002, 301–796–3601.

SUPPLEMENTARY INFORMATION: The holder of an approved application to market a new drug for human use is required to submit annual reports to FDA concerning its approved application in accordance with § 314.81 (21 CFR 314.81). DHL Laboratories Inc. has failed to submit the required annual reports and has not responded to the Agency's request for submission of the reports.

Therefore, notice is given to DHL Laboratories Inc. and to all other interested persons that the Director of CDER proposes to issue an order, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(e)), withdrawing approval of NDA 019971, Dextrose 5% in Plastic Container, 5 g/100 mL, and all amendments and supplements to it on the grounds that DHL Laboratories Inc. has failed to submit reports required under § 314.81.

In accordance with section 505 of the FD&C Act and part 314 (21 CFR part 314), DHL Laboratories Inc. is hereby provided an opportunity for a hearing to show why approval of NDA 019971 should not be withdrawn and an opportunity to raise, for administrative determination, all issues relating to the legal status of the drug product covered by this application.

An applicant who decides to seek a hearing must file the following: (1) A written notice of participation and request for a hearing (see **DATES** and **ADDRESSES**) and (2) the data, information, and analyses relied on to demonstrate that there is a genuine and substantial issue of fact that requires a hearing (see **DATES** and **ADDRESSES**). Any other interested person may also submit comments on this notice. The procedures and requirements governing this notice of opportunity for a hearing, notice of participation and request for a hearing, the information and analyses to justify a hearing, other comments, and a grant or denial of a hearing are contained in § 314.200 and in 21 CFR part 12.

The failure of an applicant to file a timely written notice of participation and request for a hearing, as required by § 314.200, constitutes an election by that applicant not to avail itself of the opportunity for a hearing concerning CDER's proposal to withdraw approval of the application and constitutes a waiver of any contentions concerning the legal status of the drug product. FDA will then withdraw approval of the application, and the drug product may not thereafter be lawfully introduced or delivered for introduction into interstate commerce. Any new drug product introduced or delivered for introduction into interstate commerce without an approved application is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials, but must present specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If a request for a hearing is not complete or is not supported, the Commissioner of Food and Drugs will enter summary judgment against the person who requests the hearing, making findings and conclusions, and denying a hearing.

All submissions under this notice of opportunity for a hearing must be filed in four copies. Except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, the submissions may be seen at the Dockets Management Staff (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *https://www.regulations.gov.*

This notice is issued under section 505(e) of the FD&C Act and under authority delegated to the Director of CDER by the Commissioner of Food and Drugs.

Dated: August 24, 2018.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 2018–18749 Filed 8–28–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel PAR Panel: Mechanisms and Consequences of Sleep Disparities.

Date: September 25–26, 2018.

Time: 7:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Jane A Doussard-Roosevelt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, (301) 435–4445, *doussarj@csr.nih.gov.*

(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 22, 2018.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–18652 Filed 8–28–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed 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 Heart, Lung, and Blood Institute Special Emphasis Panel; REDS IV—Domestic Hubs.

Date: September 12, 2018.

Time: 8:00 a.m. to 11:30 a.m.

Agenda: To review and evaluate contract proposals.

Place: Courtyard by Marriott, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Charles Joyce, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7196, Bethesda, MD 20892–7924, 301–827–7939, *cjoyce@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; REDS IV—International Hub.

Date: September 12, 2018.

Time: 11:30 a.m. to 12:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: Courtyard by Marriott, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Charles Joyce, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7196, Bethesda, MD 20892–7924, 301–827–7939, *cjoyce@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; REDS IV—Center for Transfusion Lab Studies.

Date: September 12, 2018.

Time: 1:00 p.m. to 1:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: Courtyard by Marriott, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Charles Joyce, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7196, Bethesda, MD 20892–7924, 301–827–7939, *cjoyce@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; REDS IV—Data Coordinating Center.

Date: September 12, 2018.

Time: 1:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: Courtyard by Marriott, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Charles Joyce, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7196, Bethesda, MD 20892–7924, 301–827–7939, *cjoyce@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; PRIDE Research Education Centers.

Date: September 13, 2018.

Time: 8:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza Washington National Airport, 1489 Jefferson Davis Hwy, Arlington, VA 22202.

Contact Person: William J. Johnson, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7178, Bethesda, MD 20892–7924, 301–827–7938, *johnsonwj@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; PRIDE Coordinating Center.

Date: September 13, 2018.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza Washington National Airport, 1480 Crystal Drive, Arlington, VA 22202.

Contact Person: William J. Johnson, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7178, Bethesda, MD 20892–7924, 301–827–7938, *johnsonwj@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Multi-Site Clinical Trial AIDS Special Emphasis Panel.

Date: September 14, 2018.

Time: 3:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Keary A. Cope, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7190, Bethesda, MD 20892–7924, 301–827–7912, *copeka@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: August 23, 2018.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–18653 Filed 8–28–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Center for Scientific Review Advisory Council.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Center for Scientific Review Advisory Council.

Date: September 24, 2018

Time: 8:30 a.m. to 3:00 p.m.

Agenda: Provide advice to the Director, Center for Scientific Review (CSR), on matters related to planning, execution, conduct, support, review, evaluation and receipt and referral of grant applications at CSR.

Place: National Institutes of Health, Third Floor Conference Center, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Christine L Melchior, Ph.D., Senior Advisor to the Director, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3030, MSC 7776, Bethesda, MD 20892, (301) 435–1111, *melchioc@csr.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into NIH buildings. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit. Information is also available on the Institute's/Center's home page: *http://public.csr.nih.gov/aboutcsr/CSROrganization/Pages/CSRAC.aspx,* where an agenda and any additional information for the meeting will be posted when available.

(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 22, 2018.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–18654 Filed 8–28–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[CBP Dec. 18–10]

Tuna-Tariff Rate Quota for Calendar Year 2018 Tuna Classifiable Under Subheading 1604.14.22, Harmonized Tariff Schedule of the United States

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

ACTION: Announcement of the quota quantity of tuna in airtight containers for Calendar Year 2018.

SUMMARY: Each year, the tariff-rate quota for tuna described in subheading 1604.14.22, Harmonized Tariff Schedule of the United States (HTSUS), is calculated as a percentage of the tuna in airtight containers entered, or withdrawn from warehouse, for consumption during the preceding Calendar Year. This document sets forth the tariff-rate quota for Calendar Year 2018.

DATES: The 2018 tariff-rate quota is applicable to tuna in airtight containers entered, or withdrawn from warehouse, for consumption during the period January 1, 2018 through December 31, 2018.

FOR FURTHER INFORMATION CONTACT: Melba Hubbard, Headquarters Quota Branch, Interagency Collaboration Division, Trade Policy and Programs, Office of Trade, U.S. Customs and Border Protection, Washington, DC 20229–1155, (202) 863–6560.

Background

It has been determined that 13,951,961 kilograms of tuna in airtight containers may be entered, or withdrawn from warehouse, for consumption during the Calendar Year 2018, at the rate of 6.0 percent *ad valorem* under subheading 1604.14.22, Harmonized Tariff Schedule of the United States (HTSUS). Any such tuna which is entered, or withdrawn from warehouse, for consumption during the current calendar year in excess of this quota will be dutiable at the rate of 12.5 percent *ad valorem* under subheading 1604.14.30, HTSUS.

Dated: August 23, 2018.

Brenda B. Smith,

Executive Assistant Commissioner, Office of Trade.

[FR Doc. 2018–18687 Filed 8–28–18; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–MB–2018–N104; FF09M13200/189/FXMB12330900000; OMB Control Number 1018—New]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Federal Migratory Bird Hunting and Conservation Stamp (Duck Stamp) and Junior Duck Stamp Contests

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service (Service, we), are proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before September 28, 2018.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or via facsimile to (202) 395–5806. Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to *Info_Coll@fws.gov.* Please reference OMB Control Number 1018—New in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Madonna L. Baucum, Service Information Collection Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We published a **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information on February 1, 2018 (83 FR 4671). We received one comment in response to that Notice, but it did not address the information collection. We took no action in response to the comment.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the Service; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Service enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Service minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your that your entire comment—including your personal identifying information—may be publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract

History of the Federal Duck Stamp

On March 16, 1934, Congress passed, and President Franklin D. Roosevelt signed, the Migratory Bird Hunting Stamp Act (16 U.S.C. 718–718k). Popularly known as the Duck Stamp Act, it required all waterfowl hunters 16 years or older to buy a stamp annually. The revenue generated was originally earmarked for the Department of Agriculture, but 5 years later was transferred to the Department of the Interior and the Service.

In the years since its enactment, the Federal Duck Stamp Program has become one of the most popular and successful conservation programs ever initiated. Today, some 1.5 million stamps are sold each year, and as of 2017, Federal Duck Stamps have generated more than $1 billion for the preservation of more than 6 million acres of waterfowl habitat in the United States. Numerous other birds, mammals, fish, reptiles, and amphibians have similarly prospered because of habitat

protection made possible by the program. An estimated one-third of the Nation's endangered and threatened species find food or shelter in refuges preserved by Duck Stamp funds. Moreover, the protected wetlands help dissipate storms, purify water supplies, store flood water, and nourish fish hatchlings important for sport and commercial fishermen.

History of the Duck Stamp Contest

Jay N. ''Ding'' Darling, a nationally known political cartoonist for the Des Moines Register and a noted hunter and wildlife conservationist, designed the first Federal Duck Stamp at President Roosevelt's request. In subsequent years, noted wildlife artists submitted designs. The first Federal Duck Stamp Contest was opened in 1949 to any U.S. artist who wished to enter, and 65 artists submitted a total of 88 design entries. Since then, the contest has been known as the Federal Migratory Bird Hunting and Conservation Stamp Art (Duck Stamp) Contest and has attracted large numbers of entrants.

The Duck Stamp Contest (50 CFR part 91) remains the only art competition of its kind sponsored by the U.S. Government. The Secretary of the Interior appoints a panel of noted art, waterfowl, and philatelic authorities to select each year's winning design. Winners receive no compensation for the work, except a pane of their stamps, but winners may sell prints of their designs, which are sought by hunters, conservationists, and art collectors.

The Service selects five or fewer species of waterfowl each year; each entry must employ one of the Service-designated species as the dominant feature (defined as being in the foreground and clearly the focus of attention). Designs may also include hunting dogs, hunting scenes, waterfowl decoys, national wildlife refuges as the background of habitat scenes, non-eligible species, or other scenes that depict uses of the stamp for sporting, conservation, and collecting purposes. Entries may be in any media EXCEPT photography or computer-generated art. Designs must be the contestants' original hand-drawn creation and may not be copied or duplicated from previously published art, including photographs, or from images in any format published on the internet.

History of the Junior Duck Stamp Contest

The Federal Junior Duck Stamp Conservation and Design Program (Junior Duck Stamp Program) began in 1989 as an extension of the Migratory Bird Conservation and Hunting Stamp. The national Junior Duck Stamp art contest started in 1993, and the first stamp design was selected from entries from eight participating states. The program was recognized by Congress with the 1994 enactment of the Junior Duck Stamp Conservation and Design Program Act (16 U.S.C. 719). All 50 states, Washington DC, and 2 of the U.S. Territories currently participate in the annual contest.

The Junior Duck Stamp Program introduces wetland and waterfowl conservation to students in kindergarten through high school. It crosses cultural, ethnic, social, and geographic boundaries to teach greater awareness and guide students in exploring our nation's natural resources. It is the Service's premier conservation education initiative.

The Junior Duck Stamp Program includes a dynamic art- and science-based curriculum. This non-traditional pairing of subjects brings new interest to both the sciences and the arts. The program teaches students across the nation conservation through the arts, using scientific and wildlife observation principles to encourage visual communication about what they learn. Four curriculum guides, with activities and resources, were developed for use as a year-round study plan to assist students in exploring science in real-life situations.

Modeled after the Federal Duck Stamp Contest, the annual Junior Duck Stamp Art and Conservation Message Contest (Junior Duck Stamp Contest) was developed as a visual assessment of a student's learning and progression. The Junior Duck Stamp Contest encourages partnerships among Federal and State government agencies, nongovernment organizations, businesses, and volunteers to help recognize and honor thousands of teachers and students throughout the United States for their participation in conservation-related activities. Since 2000, the contest has received more than 478,000 entries.

The winning artwork from the national art contest serves as the design for the Junior Duck Stamp, which the Service produces annually. This $5 stamp has become a much sought after collector's item. One hundred percent of the revenue from the sale of Junior Duck stamps goes to support recognition and environmental education activities for students who participate in the program. More than $1.25 million in Junior Duck Stamp proceeds have been used to provide recognition, incentives, and scholarships to participating students, teachers, and schools. The Program continues to educate youth about land stewardship and the importance of connecting to their natural worlds. Several students who have participated in the Junior Duck Stamp Program have gone on to become full-time wildlife artists and conservation professionals; many attribute their interest and success to their early exposure to the Junior Duck Stamp Program.

Who Can Enter the Federal Duck Stamp and Junior Duck Stamp Contests

The Duck Stamp Contest is open to all U.S. citizens, nationals, and resident aliens who are at least 18 years of age by June 1. Individuals enrolled in kindergarten through grade 12 may participate in the Junior Duck Stamp Contest. All eligible students are encouraged to participate in the Junior Duck Stamp Conservation and Design Program annual art and conservation message contest as part of the program curriculum through public, private, and homeschools, as well as through informal educational experiences such as those found in scouting, art studios, and nature centers.

Entry Requirements

Each entry in the Duck Stamp Contest requires a completed entry form and an entry fee. Information required on the entry form includes:

- ''Display, Participation & Reproduction Rights Agreement'' certification form;
- Basic contact information (name, address, phone numbers, and email address);
- Date of birth (to verify eligibility);
- Species portrayed and medium used; and
- Name of hometown newspaper (for press coverage).

Each entry in the Junior Duck Stamp Contest requires a completed entry form that requests:

- Basic contact information (name, address, phone numbers, and email address);
- Age (to verify eligibility);
- Parent's name and contact information;
- Whether the student has a Social Security or VISA immigration number (to verify eligibility to receive prizes);
- Whether the student is a foreign exchange student;
- Grade of student (so they may be judged with their peers);
- The title, species, medium used, and conservation message associated with the drawing;
- Basic contact information for their teacher and school (name, address, phone numbers, and email address); and
- Certification of authenticity.

Students in Grades 7–12 and all national level students are also required to include citations for any resources they used to develop their designs. We use this information to verify that the student has not plagiarized or copied someone else's work. The Service also translates entry forms into other appropriate languages to increase the understanding of the rules and what the parents and students are signing.

Title of Collection: Federal Migratory Bird Hunting and Conservation Stamp (Duck Stamp) and Junior Duck Stamp Contests.

OMB Control Number: 1018—New.

Form Number: None.

Type of Review: Existing collection in use without an OMB Control Number.

Respondents/Affected Public: Individuals.

Respondent's Obligation: Voluntary.

Frequency of Collection: Annually.

Activity	Total number of annual respondents	Average number of submissions each	Total number of annual responses	Average completion time per response (min)	Total annual burden hours *
Duck Stamp Program Contest Entry Form					
Individuals	200	1	200	7	23
Junior Duck Stamp Program Contest Entry Form					
Individuals	25,000	1	25,000	** 20	8,333
Totals:	25,200	1	25,200		8,356

* Rounded.

** Burden for Junior Duck Stamp Program entry form is longer since both the parents and teacher must sign the form, and the student must provide references.

Total Estimated Annual Nonhour Burden Cost: $53,000.00 annually (entry fees of $125 plus an average of $15 for mailing costs for submissions the estimated 200 annual submissions to the Federal Duck Stamp Contest). There are no fees associated with the Junior Duck Stamp Contest submissions. We estimate the mailing costs associated with entering submissions to the Junior Duck Stamp contest to be approximately $25,000 annually. Most of the 25,000 entries are mailed directly by schools who utilize the bulk mail option reducing the amount of postage and packages received.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: August 23, 2018.

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2018–18671 Filed 8–28–18; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[189A2100DD/AAKC001030/ A0A501010.999900 253G; OMB Control Number 1076–0112]

Agency Information Collection Activities; Tribal Reassumption of Jurisdiction Over Child Custody Proceedings

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Indian Affairs (BIA) are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before October 29, 2018.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to Evangeline M. Campbell, Chief, Division of Human Services, Bureau of Indian Affairs, 1849 C Street NW, MIC–3645, Washington, DC 20240; or by email to *evangeline.campbell@bia.gov.* Please reference OMB Control Number 1076–0112 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Evangeline M. Campbell by email at *evangeline.campbell@bia.gov,* or by telephone at 202–513–7621.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the BIA; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the BIA enhance the quality, utility, and clarity of the information to be collected; and (5) how might the BIA minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment

to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The BIA is seeking to renew the information collection conducted under 25 CFR 13, Tribal Reassumption of Jurisdiction over Child Custody Proceedings, which prescribes procedures by which an Indian tribe that occupies a reservation over which a state asserts any jurisdiction pursuant to federal law may reassume jurisdiction over Indian child proceedings as authorized by the Indian Child Welfare Act, Public Law 95–608, 92 Stat. 3069, 25 U.S.C. 1918.

The collection of information will ensure that the provisions of Public Law 95–608 are met. Any Indian Tribe that became subject to State jurisdiction pursuant to the provisions of the Act of August 15, 1953 (67 Stat. 588), as amended by title IV of the Act of April 11, 1968 (82 Stat. 73,78), or pursuant to any other Federal law, may reassume jurisdiction over child custody proceedings. The collection of information provides data that will be used in considering the petition and feasibility of the plan of the Tribe for reassumption of jurisdiction over Indian child custody proceedings. We collect the following information: Full name, address, and telephone number of petitioning Tribe or Tribes; a Tribal resolution; estimated total number of members in the petitioning Tribe of Tribes with an explanation of how the number was estimated; current criteria for Tribal membership; citation to provision in Tribal constitution authorizing the Tribal governing body to exercise jurisdiction over Indian child custody matters; description of Tribal court; copy of any Tribal ordinances or Tribal court rules establishing procedures or rules for exercise of jurisdiction over child custody matters; and all other information required by 25 CFR 13.11.

Title of Collection: Tribal Reassumption of Jurisdiction over Child Custody Proceedings.

OMB Control Number: 1076–0112.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Federally recognized Tribes who submit Tribal reassumption petitions for review and approval by the Secretary of the Interior.

Total Estimated Number of Annual Respondents: 1.

Total Estimated Number of Annual Responses: 1.

Estimated Completion Time per Response: 8 hours.

Total Estimated Number of Annual Burden Hours: 8 hours.

Respondent's Obligation: Required to Obtain or Retain a Benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Non-hour Burden Cost: None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*).

Elizabeth K. Appel,

Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2018–18724 Filed 8–28–18; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[Docket No. ONRR–2012–0003, DS63600000 DR2000000.PMN000 189D0102R2]

Royalty Policy Committee; Public Meeting; Correction

AGENCY: Office of Natural Resources Revenue, Interior.

ACTION: Notice; correction.

SUMMARY: The Office of Natural Resources Revenue (ONRR) published a document in the **Federal Register** of August 13, 2018, announcing the fourth meeting of the Royalty Policy Committee (Committee). The document contained an incorrect meeting location.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Mentasti, Office of Natural Resources Revenue at (202) 513–0614 or email to *rpc@ios.doi.gov.*

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of August 13, 2018, in FR Doc. 2018–17346, on page 40081, in the third column, correct the **ADDRESSES** caption to read:

ADDRESSES: The Committee meeting will be held at the Sheraton Denver West Hotel, 360 Union Boulevard, Lakewood, CO 80228. Members of the public may attend in person or view documents and presentation under discussion via WebEx at *https://onrr.webex.com/onrr/j.php?MTID=m8b07b197593ce80917ef1715ae9f262a* and listen to the proceedings at telephone number 1–888–469–0854 or International Toll number 517–319–9462 (passcode: 9724702).

Authority: 5 U.S.C. Appendix 2.

Gregory J. Gould,

Director for Office of Natural Resources Revenue.

[FR Doc. 2018–18680 Filed 8–28–18; 8:45 am]

BILLING CODE 4335–30–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0071]

Agency Information Collection Activities; Proposed eCollection of eComments Requested; Notification to Fire Safety Authority of Storage of Explosive Materials

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed collection OMB 1140–0071 (Notification to Fire Safety Authority of Storage of Explosive Materials) is being revised due to a change in burden, since there is a reduction in both the total responses and total burden hours due to less respondents, although there is a slight increase in the cost burden due to higher postage costs since 2015.

DATES: The comment period for the proposed information collection published on June 28, 2018 (83 FR 30458) is reopened. Comments are encouraged and will be accepted for an additional 30 days until September 28, 2018.

FOR FURTHER INFORMATION CONTACT: If you have additional comments, particularly with respect to the estimated public burden or associated response time, have suggestions, need a copy of the proposed information collection instrument with instructions, or desire any other additional information, please contact Anita Scheddel, Program Analyst, Explosives Industry Programs Branch, either by mail 99 New York Ave. NE, Washington, DC 20226, or by email at *eipb-informationcollection@atf.gov,* or by telephone at 202–648–7158. Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and

Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: The proposed information collection was previously published in the **Federal Register**, on June 28, 2018 (83 FR 30458), allowing for a 60-day comment period. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* Revision of a currently approved collection.

(2) *The title of the form/collection:* Notification to Fire Safety Authority of Storage of Explosive Materials.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: None.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: Individuals or households, Farms, and State, Local, or Tribal Government.

Abstract: The collection of information is necessary for the safety of emergency response personnel responding to fires at sites where explosives are stored. The information is provided both orally and in writing to the authority having jurisdiction for fire safety in the locality in which explosives are stored.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 975 respondents will respond once to this information collection, and it will take each respondent approximately 30 minutes to complete their responses on the template provided by ATF.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 488 hours, which is equal to 975 (# of respondents) * 1 (# of responses per respondents) * .5 (30 minutes).

(7) *An explanation of the change in estimate:* The total responses and burden hours associated with this IC were reduced by 50 and 25 respectively, due to less respondents since the previous renewal in 2015. However, the total costs for this IC have increased by $27, due to an increase in mailing costs from 45 cents in 2015 to 50 cents in 2018.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: August 24, 2018.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2018–18733 Filed 8–28–18; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0070]

Agency Information Collection Activities; Proposed eCollection of eComments Requested; Application for Explosives License or Permit—ATF F 5400.13/5400.16

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: The comment period for the proposed information collection published on June 28, 2018 (83 FR 30457) is reopened. Comments are encouraged and will be accepted for an additional 30 days until September 28, 2018.

FOR FURTHER INFORMATION CONTACT: If you have additional comments, particularly with respect to the estimated public burden or associated response time, have suggestions, need a copy of the proposed information collection instrument with instructions, or desire any other additional information, please contact Shawn Stevens, Federal Explosives Licensing Center, either by mail at 244 Needy Road, Martinsburg, WV 25405, by email at *Shawn.Stevens@atf.gov,* or by telephone at 304–616–4400. Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: The proposed information collection was previously published in the **Federal Register**, on June 28, 2018 (83 FR 30457), allowing for a 60-day comment period. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, without change, of a currently approved collection.

(2) *The Title of the Form/Collection:* Application for Explosives License or Permit.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: ATF F 5400.13/5400.16.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: Individuals or households, Not-for-profit institution, and Farms.

Abstract: Chapter 40, Title 18, U.S.C., provides that any person engaged in the business of explosive materials as a dealer, manufacturer, or importer shall be licensed (18 U.S.C. 842(a)(1)). In addition, provisions are made for the issuance of permits for those who wish to use explosive materials that are shipped in interstate or foreign commerce.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 10,200 respondents will utilize the form associated with this information collection, and it will take each respondent approximately 1 hour and 30 minutes to respond once to this form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 15,300 hours, which is equal to 10,200 (total hours) * 1 (# of responses) * 1.5 hours (total time taken to complete each response).

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: August 24, 2018.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2018–18732 Filed 8–28–18; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF JUSTICE

[OMB Number 1140–0101]

Agency Information Collection Activities; Proposed eCollection eComments Requested; New Collection: Death in Custody Reporting Act Collection

AGENCY: Bureau of Justice Assistance, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Justice Assistance 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. The Death in Custody Reporting Act (DCRA) requires states and federal law enforcement agencies to report certain information to the Attorney General regarding the death of any person occurring during interactions with law enforcement officers or while in custody. It further requires the Attorney General and the Department of Justice (Department) to collect the information, establish guidelines on how it should be reported, annually determine whether each state has complied with the reporting requirements, and address any state's noncompliance.

DATES: Comments are encouraged and will be accepted for 30 days until September 28, 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 Chris Casto, Bureau of Justice Assistance, 810 Seventh Street NW, Washington, DC 20531 (email: *DICRAComments@usdoj.gov*); telephone: 202–616–6500.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection (check justification or form 83):* New Collection.

The Title of the Form/Collection: Death in Custody Reporting Act Collection.

(2) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form number (if applicable): DCR–1.

Quarterly Summary. This summary form requires States to either (1) identify all reportable deaths that occurred in their jurisdiction during the corresponding quarter and provide basic information about the circumstances of the death, or (2) affirm that no reportable death occurred in the State during the reporting period.

For each quarter in a fiscal year, a State must complete the Quarterly Summary (Form DCR–1) and submit it by the reporting deadline. The Quarterly Summary is a list of all reportable deaths that occurred in the State during the corresponding quarter with basic information about the circumstances of each death. If a State did not have a reportable death during the quarter, the State must so indicate on the Quarterly Summary. The reporting deadline to submit the Quarterly Summary is the last day of the month following the close of the quarter. For each quarter, BJA will send two reminders prior to the reporting deadline.

Example. The second quarter of a fiscal year is January 1—March 31. The deadline to submit the second quarter Quarterly Summary is April 30. BJA will send a reminder to States on March 31 and April 15.

Component: Bureau Justice Assistance, U.S. Department of Justice.

Form number (if applicable): DCR–1A

Incident Report. This incident report form requires States to provide additional information for each reportable death identified in the Quarterly Summary that occurred during interactions with law

enforcement personnel or while in their custody.

For each reportable death identified in the Quarterly Summary, a State must complete and submit by the same reporting deadline an Incident Report (Form DCR–1A), which contains specific information on the circumstances of the death and additional characteristics of the decedent. These include:

- The decedent's name, date of birth, gender, race, and ethnicity.
- The date, time, and location of the death.
- The law enforcement or correctional agency involved.
- Manner of death.

States must answer all questions on the Incident Report before they can submit the form. If the State does not have sufficient information to complete one of the questions, then the State may select the ''unknown'' answer, if available, and then identify when the information is anticipated to be obtained.

Component: Bureau Justice Assistance, U.S. Department of Justice.

Affected public who will be asked or required to respond, as well as a brief abstract: Primary: State, Local, or Tribal Government.

Abstract: In order to comply with the mandate of the DCRA, the Department of Justice, Bureau of Justice Assistance, is proposing a new data collection for State Administering Agencies to collect and submit information regarding the death of any person who is detained, under arrest, or is in the process of being arrested, is en route to be incarcerated, or is incarcerated at a municipal or county jail, State prison, State-run boot camp prison, boot camp prison that is contracted out by the State, any State or local contract facility, or other local or State correctional facility (including any juvenile facility).

(3) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: For purposes of this collection, the term ''State'' includes any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands. Thus, the affected public that will be asked to respond on a quarterly basis each federal fiscal year includes 56 State and Territorial actors. These States will be requesting information from approximately 19,450 State and local law enforcement agencies (LEAs), 56 State and Territorial departments of corrections, and 2,800 local adult jail jurisdictions.

(4) An estimate of the total public burden (in hours) associated with the collection: For purposes of this burden calculation, it is estimated that for each fiscal year there will be a total of 1900 reportable deaths by 1,060 LEAs, 1,053 reportable deaths by 600 jails, and 3,483 reportable deaths by prisons.

For FY 2020 and beyond, the total projected respondent burden is 13,756.49 hours. States will need an estimated 4.00 hours to complete each Quarterly Summary for a total of 4,480.00 hours, 0.25 hours to complete each corresponding Incident Reports (DCR–1A) for a total of 1,713.49 hours. For LEAs, the estimated burden to assist States in completing the Quarterly Summaries is 0.40 hours per Report for a total of 1,696.00 hours, and a total of 1,425.00 hours, at 0.75 hours for each corresponding Incident Report. The estimated burden for jails is a total of 960.00 hours to assist States in completing the Quarterly Summaries and 789.75 hours in completing Incident Reports. Finally, the estimated burden for prisons to assist States in completing the Quarterly Summaries is a total of 80.00 hours, and a total of 2,612.25 hours to assist States in completing Incident Reports.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: August 24, 2018.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2018–18700 Filed 8–28–18; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

On August 20, 2018, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Northern District of Iowa in the lawsuit entitled *United States* v. *AG Processing Inc.,* Civil Action No. 3:18–cv–03052–LRR.

The United States filed this lawsuit under Section 311(j) of the Clean Water Act, 33 U.S.C. 1321(j). The United States' complaint seeks injunctive relief and civil penalties for violations of the Spill Prevention, Control, and Countermeasure regulations and the Facility Response Plan regulations at defendant's facilities in Iowa, Nebraska, and Minnesota. The consent decree requires the defendant to perform injunctive relief and pay a $500,000 civil penalty.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *AG Processing Inc.,* D.J. Ref. No. 90–5–1–1–11716. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, US DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $12.75 (25 cents per page reproduction cost) payable to the United States Treasury.

Susan M. Akers,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2018–18651 Filed 8–28–18; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Settlement Agreement Under the Comprehensive Environmental Response, Compensation, and Liability Act

On August 23, 2018, the Department of Justice lodged a proposed Settlement Agreement with the United States Bankruptcy Court for the District of Utah in the matter entitled *In re: Federal Resources Corporation and Camp Bird Colorado, Inc.* Bankruptcy Case No. 14–33427 KRA. This Settlement Agreement resolves disputes with the Trustee for

Debtors Federal Resources Corporation (''FRC'') and Camp Bird Colorado, Inc. (''CBCI'') as well as their former principal Bentley Blum. The proposed settlement will (1) Establish the amounts of the United States claims at the four Sites at issue in the bankruptcies; (2) Provide an allowed preferred claim at the Camp Bird Site; (3) Establish United States' recoveries from FRC's insurance policies; (4) Grant a CNTS from the United States to Mr. Blum, and (5) Resolve all claims the Debtors have for and against Mr. Blum. The claims arise from the Debtors' liabilities under Section 107(a) of CERCLA, 42 U.S.C. 9607(a), for costs incurred and to be incurred relating to four Superfund Sites: The Conjecture Mine Site in Bonner County, Idaho; the Minnie Moore Mine Site in Blaine County, Idaho; the Haystack Mines Site in McKinley County, New Mexico; and the Camp Bird Colorado Mine Site near Ouray, Colorado.

The publication of this notice opens a period for public comment on the Settlement Agreement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *In re: Federal Resources Corporation and Camp Bird Colorado, Inc.* Bankruptcy Case No. 14–33427, D.J. Ref. No. 90–11–3–09515/5. All comments must be submitted no later than twenty (20) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Settlement Agreement may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Settlement Agreement upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $5.00 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without the exhibits, the cost is $4.00.

Susan M. Akers,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2018–18659 Filed 8–28–18; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

[OMB Number 1123–0010]

Agency Information Collection Activities: Proposed Collection; Comments Requested; Request for Registration Under the Gambling Devices Act of 1962

ACTION: 30-day notice.

SUMMARY: The Department of Justice (DOJ), Criminal Division, 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. This proposed information collection was previously published in the **Federal Register** allowing for a 60 day comment period.

DATES: The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 30 days until September 28, 2018.

FOR FURTHER INFORMATION CONTACT: If you have 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 Michelle Hill, Counsel to the Director, U.S. Department of Justice, 950 Pennsylvania Avenue NW, Criminal Division, Office of Enforcement Operations, Gambling Device Registration Program, JCK Building, Washington, DC 20530–0001. (telephone: 202–514–7049)

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Request for Registration Under the Gambling Devices Act of 1962.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: DOJ\CRM\OEO\GDR–1. Sponsoring component: Criminal Division, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: Not-for-profit institutions, individuals or households, and State, Local or Tribal Government. The form can be used by any entity required to register under the Gambling Devices Act of 1962 (15 U.S.C. 1171–1178).

(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 7,800 respondents will complete each form within approximately 5 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 650 total annual burden hours associated with this collection.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: August 24, 2018.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2018–18701 Filed 8–28–18; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF JUSTICE

U.S. Marshals Service

[OMB Number 1105–0096]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension With Change, of a Previously Approved Collection; Sequestered Juror Information Form

AGENCY: U.S. Marshals Service, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), U.S. Marshals Service (USMS), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until October 29, 2018.

FOR FURTHER INFORMATION CONTACT: If you have additional comments, particularly with respect to the estimated public burden or associated response time, have suggestions, need a copy of the proposed information collection instrument with instructions, or desire any additional information, please contact Nicole Timmons either by mail at CG–3, 10th Floor, Washington, DC 20530–0001, by email at *Nicole.Timmons@usdoj.gov,* or by telephone at 202–236–2646.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of thiS Information Collection

(1) *Type of Information Collection* (check justification or form 83): Extension of a currently approved collection.

(2) *The Title of the Form/Collection:* Sequestered Juror Information Form.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number (if applicable): Form USM–523A.

Component: United States Marshals Service, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Households/individuals.

Abstract: The United States Marshals Service is responsible for ensuring the security of federal courthouses, courtrooms, and federal jurist. This information assists Marshals Service personnel in the planning of, and response to, potential security needs of the court and jurors during the course of proceedings. The authority for collecting the information on this form is 28 U.S.C. 509, 510 and 561 *et seq.*

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 14 respondents will utilize the form, and it will take each respondent approximately 4 minutes to complete the form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 1 hour, which is equal to (14 (total # of annual responses) * 4 minutes = 56 minutes or 1 hour).

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: August 24, 2018.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2018–18702 Filed 8–28–18; 8:45 am]

BILLING CODE 4410–04–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (18–065)]

Planetary Science Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Planetary Science Advisory Committee (PAC). This Committee functions in an advisory capacity to the Director, Planetary Science Division, in the NASA Science Mission Directorate. The meeting will be held for the purpose of soliciting, from the planetary science community and other persons, scientific and technical information relevant to program planning.

DATES: Wednesday, September 26, 2018, 1:00 p.m. to 5:00 p.m., Eastern Time.

ADDRESSES: This meeting will be virtual and will be available telephonically and by WebEx. You must use a touch-tone phone to participate in this meeting. Any interested person may dial the USA toll free conference call number 1–800–779–9966 or the toll number 1–517–645–6359, passcode 5255996. The WebEx link is *https://nasa.webex.com/;* the meeting number is 999 932 505, password is PAC@Sept26.

FOR FURTHER INFORMATION CONTACT: Ms. KarShelia Henderson, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–2355, fax (202) 358–2779, or *khenderson@nasa.gov.*

The agenda for the meeting includes the following topics:

—Planetary Science Division Update

—Planetary Science Division Research and Analysis Program Update

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Patricia Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2018–18629 Filed 8–28–18; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–0609; NRC–2018–0184]

Target Fabrication Portion of the Northwest Medical Isotopes Radioisotope Production Facility

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuing an exemption to Northwest Medical Isotopes, LLC (NWMI) from its regulations, to waive the requirement that NWMI submit an application to the NRC for a license to possess and use special nuclear material for processing and fuel fabrication, scrap recovery or conversion of uranium hexafluoride, or for the conduct of any other activity which the NRC has determined will significantly affect the quality of the environment, at least 9 months prior to commencement of construction of the plant or facility in which the activity will be conducted. The NRC has prepared an environmental assessment (EA) and finding of no significant impact (FONSI) for this exemption request.

DATES: The EA and FONSI referenced in this document are available on the 24th day of August, 2018.

ADDRESSES: Please refer to Docket ID NRC–2018–0184 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0184. Address questions about NRC dockets to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: David Tiktinsky, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–8740, email: *David.Tiktinsky@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The NRC is considering issuing an exemption to NWMI from section 70.21(f) in title 10 of the *Code of Federal Regulations* (10 CFR), which requires the submission of an application to the NRC under 10 CFR part 70, ''Domestic Licensing of Special Nuclear Material,'' for a license to possess and use special nuclear material for processing and fuel fabrication, scrap recovery or conversion of uranium hexafluoride, or for the conduct of any other activity which the NRC has determined pursuant to subpart A of 10 CFR part 51 will significantly affect the quality of the environment, at least 9 months prior to commencement of construction of the plant or facility in which the activity will be conducted. The exemption would allow NWMI to commence construction of the entire NWMI medical radioisotope production facility (RPF) based upon the environmental review conducted for the 10 CFR part 50 construction permit issued to NWMI on May 9, 2018. The exemption was requested by NWMI in a letter dated December 18, 2017 (ADAMS Accession No. ML17362A040), as supplemented on March 12, 2018 (ADAMS Accession No. ML18088A175).

The NWMI 10 CFR part 50 construction permit application, which included an environmental report, discussed processes that would fall under 10 CFR 70.21(f). The NRC staff environmental review of the 10 CFR part 50 construction permit application discussed, as a connected action, the environmental impacts of this process, consistent with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and the NRC's environmental protection regulations that implement NEPA in 10 CFR part 51. The NRC staff documented the evaluation and conclusions of its environmental review of the NWMI 10 CFR part 50 construction permit application in an environmental impact statement (EIS), NUREG–2209, ''Environmental Impact Statement for the Construction Permit for the Northwest Medical Isotopes Radioisotope Production Facility,'' issued in May 2017 (ADAMS Accession No. ML17130A862).

As required by 10 CFR 51.21, the NRC staff prepared an EA that analyzes the environmental impacts of the proposed exemption in accordance with NEPA. Based on the EA that follows, the NRC has determined not to prepare an EIS for the proposed exemption, and is issuing a FONSI.

II. Environmental Assessment

Identification of the Proposed Action

The proposed action is the issuance of an exemption in response to a request dated December 18, 2017 (ADAMS Accession No. ML17362A040), as supplemented by a letter dated March 12, 2018 (ADAMS Accession No. ML18088A175), from NWMI. The purpose of the proposed action is to exempt NWMI from the requirement that NWMI submit an application to the NRC for a license under 10 CFR part 70 at least 9 months prior to commencement of construction of the plant or facility in which the 10 CFR part 70 activities will be conducted. The activities that will be subject to the 10 CFR part 70 license application are described in the construction permit application that NWMI previously submitted to the NRC under 10 CFR part 50 for an RPF to be constructed in Columbia, Missouri. (NWMI Preliminary Safety Analyses Report, Chapter 19, ''Environmental Report.'' Corvallis, OR, revision OA dated June 2015, (ADAMS Accession Nos. ML15210A123, ML15210A128, ML15210A129, and ML15210A131)).

The NWMI exemption request asks the NRC to exempt NWMI from the timing requirement in order to allow NWMI to begin construction of the 10 CFR part 70 components of the RPF upon the issuance of the 10 CFR part 50 construction permit.

Need for the Proposed Action

NWMI received a construction permit under 10 CFR part 50 to construct the RPF, which would fabricate low-enriched uranium (LEU) targets and ship them to a network of U.S. research reactors for irradiation, receive irradiated LEU targets, disassemble and dissolve irradiated LEU targets, and recover and purify Molybdenum-99 (Mo-99). These processes would take place in a single RPF building divided into two separate areas where processes

subject to different regulatory regimes would take place. The processes involved in receipt of irradiated LEU targets, LEU target disassembly and dissolution, and Mo-99 recovery and purification are subject to the licensing requirements of 10 CFR part 50. The processes involved in target fabrication that NWMI plans to perform in a separate area of the RPF and would be subject to the separate licensing requirements of 10 CFR part 70.

NWMI submitted a 10 CFR part 50 construction permit application seeking authorization to construct the portion of the RPF where the processes subject to the 10 CFR part 50 regulations would occur. NWMI submitted an environmental report with its construction permit application, providing environmental information about all of the processes that would occur in both portions of the RPF. In accordance with Section 102(2)(C) of NEPA and the NRC's regulations in 10 CFR part 51, the NRC staff prepared an EIS (NUREG–2209) assessing the potential impacts of the construction, operation, and decommissioning of the proposed RPF on the quality of the human environment and reasonable alternatives. The construction and operation impacts from the portion of the RPF in which 10 CFR part 70 target fabrication activities would occur were evaluated as a connected action to the 10 CFR part 50 construction permit.

Because the NRC has evaluated the environmental impacts from the 10 CFR part 70 target fabrication activities in the RPF, as part of its EIS supporting NWMI's 10 CFR part 50 construction permit application, NWMI is requesting an exemption from the requirement that the application for these 10 CFR part 70 activities must be submitted at least 9 months prior to commencement of construction of the 10 CFR part 70 components of the RPF. The exemption would allow NWMI to initiate construction of the 10 CFR part 70 components of the RPF upon the issuance of the 10 CFR part 50 construction permit for the RPF even if the 10 CFR 70.21(f) timing requirement has not been met.

Environmental Impacts of the Proposed Action

The environmental impacts associated with the construction of the target fabrication portion of the RPF were evaluated and discussed in the EIS issued for the construction permit application for the 10 CFR part 50 portion of the RPF (see NUREG–2209, Section 6–4). The EIS concluded that ''[a]fter weighing the environmental, economic, technical, and other benefits against environmental and other costs, and considering reasonable alternatives, the NRC staff's recommendation, unless safety issues mandate otherwise, is the issuance of the construction permit under 10 CFR part 50 to NWMI.''

The purpose of the timing requirement in 10 CFR 70.21(f) is to allow the NRC sufficient time to conduct its environmental review of certain 10 CFR part 70 activities before commencement of construction of the facility in which they will occur. As explained above, the NRC considered the environmental impacts of the processes that will take place in 10 CFR part 70 portion of the RPF, where target fabrication processes will occur, as part of its review of the 10 CFR part 50 construction permit application. Because the exemption request concerns only the timing of when construction of the 10 CFR part 70 portion of the RPF begins, the proposed exemption would not: (a) Affect the probabilities of evaluated accidents; (b) impact margins of safety; (c) reduce the effectiveness of programs contained in licensing documents; (d) increase effluents; (e) increase occupational radiological exposures; or (f) impact operations or decommissioning activities of the RPF. The staff's safety review performed for issuance of the 10 CFR part 50 construction permit is documented in the staff's Safety Evaluation Report dated November 2017 (ADAMS Accession No. ML17310A368).

The requested exemption does not impact the scope of the proposed action or the connected actions at the RPF that were evaluated in the EIS. Accordingly, it does not involve any additional impacts or represent a significant change to those impacts described and analyzed in the environmental information submitted as part of the 10 CFR part 50 construction permit application. Based on the foregoing, the NRC staff has concluded that the proposed action would have no significant environmental impact.

Environmental Impacts of the Alternatives to the Proposed Action

A possible alternative to the proposed action would be to deny the exemption request (*i.e.,* the ''no-action'' alternative). If the NRC denies the exemption request, then NWMI may need to defer the initiation of construction of the 10 CFR part 70 components of the RPF to meet the timing requirements in 10 CFR 70.21(f). Since the exemption request relates to the timing of the initiation of construction and not to the scope of construction, then the impacts of this alternative would not be significantly different than if the NRC approved the exemption request.

Alternative Use of Resources

Since NWMI has no plans to perform any new activities that were not considered in previous environmental reviews, the change in timing to initiate construction does not involve the use of resources not previously considered.

Agencies and Persons Consulted

In a letter dated May 17, 2018 (ADAMS Accession No. ML18113A504), the NRC staff consulted with officials from the Missouri Department of Natural Resources regarding the environmental impact of the proposed action. The State responded on July 13, 2018, and stated that it had no comments (ADAMS Accession No. ML18197A199).

The NRC staff also reviewed the proposed action in accordance with the Section 106 process of the National Historic Preservation Act of 1966, as amended (NHPA) (54 U.S.C. 300101 *et seq.*), which requires federal agencies to consider the effects of their undertakings on historic properties. The NRC has determined that the proposed action, which would only affect the timing of commencement of construction of a portion of the facility, is not the type of action that has the potential to cause any additional impacts or a significant change from the impacts related to historic properties discussed and analyzed in NUREG–2209, the NRC's EIS for the 10 CFR part 50 construction permit for the RPF. Therefore, in accordance with 36 CFR 800.3(a)(1), no consultation is required under Section 106 of the NHPA.

Under Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), prior to taking a proposed action, a federal agency must determine whether: (i) Endangered and threatened species or their critical habitats are known to be in the vicinity of the proposed action and, if so, whether (ii) the proposed federal action may affect listed species or critical habitats. The NRC has determined that the proposed action will not have any additional impacts or a significant change from the impacts related to threatened or endangered species or critical habitats analyzed in the NRC's EIS for the 10 CFR part 50 construction permit for the RFP in NUREG–2209.

III. Finding of No Significant Impact

NWMI requested an exemption from 10 CFR 70.21(f) that would allow it to initiate construction of the 10 CFR part 70 components of the RPF upon the issuance of the 10 CFR part 50

construction permit for the RPF even if the 10 CFR 70.21(f) timing requirement has not been met. The NRC is considering issuing the requested exemption. The proposed action would not significantly: (a) Affect probabilities of evaluated accidents; (b) affect margins of safety; (c) affect the effectiveness of programs contained in licensing documents; (d) increase effluents; (e) increase occupational radiological exposures; or (f) affect operations or decommissioning activities of the RPF. The reason the environment would not be significantly affected is because the requested exemption affects only the timing of construction and does not affect the previous evaluation regarding the environmental impacts of constructing and operating the NWMI RPF, as described in the Environmental Impact Statement for Construction Permit for the Northwest Medical Isotopes Radioisotope Production Facility, Final Report (NUREG–2209). The impacts of connected 10 CFR part 70 actions at the RPF were evaluated in NUREG–2209. On the basis of the EA included in Section II of this document, and incorporated herein by reference, the NRC has determined not to prepare an EIS for the proposed action. The related environmental documents are: (a) NWMI Exemption request dated December 17, 2017, as supplemented on March 12, 2018 (ADAMS Accession Nos. ML17362A040 and ML18088A175); (b) NWMI Preliminary Safety Analyses Report, Chapter 19, ''Environmental Report,'' Corvallis, OR, revision OA dated June 2015, (ADAMS Accession Nos. ML15210A123, ML15210A128, ML15210A129, and ML15210A131; and (c) NUREG–2209, ''Environmental Impact Statement for the Construction Permit for the Northwest Medical Isotopes Radioisotope Production Facility,'' issued in May 2018 (ADAMS Accession No. ML17130A862).

This FONSI and other related environmental documents may be examined, and/or copied for a fee, at the NRC's PDR, located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. Publicly-available records are also accessible online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC's PDR reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by email to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland this 24th day of August, 2018.

For the Nuclear Regulatory Commission.

Brian W. Smith,

Deputy Director, Division of Fuel Cycle Safety, Safeguards, and Environmental Review, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2018–18757 Filed 8–28–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–1050; NRC–2016–0231]

Interim Storage Partner's Waste Control Specialists Consolidated Interim Storage Facility

AGENCY: Nuclear Regulatory Commission.

ACTION: Revised license application; opportunity to request a hearing and to petition for leave to intervene; order imposing procedures.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) received a request from Interim Storage Partners, a joint venture between Waste Control Specialists, LLC (WCS) and Orano CIS, LLC by letters dated June 8, 2018, and July 19, 2018, to resume NRC staff review of a license application for the WCS Consolidated Interim Storage Facility (CISF) in Andrews County, Texas. By letter dated April 18, 2017, the previous applicant, WCS, asked NRC to temporarily suspend all safety and environmental review activities.

DATES: A request for a hearing or petition for leave to intervene must be filed by August 29, 2018. Any potential party as defined in section 2.4 of title 10 of the *Code of Federal Regulations* (10 CFR), who believes access to Sensitive Unclassified Non-Safeguards Information (SUNSI) is necessary to respond to this notice must request document access by September 10, 2018.

ADDRESSES: Please refer to Docket ID NRC–2016–0231 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0231. Address questions about NRC dockets to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* For the convenience of the reader, the ADAMS accession numbers are provided in a table in the ''Availability of Documents'' section of this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: John-Chau Nguyen, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–0262; email: *John-Chau.Nguyen@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC received, by letter dated April 28, 2016, an application from WCS for a specific license pursuant to 10 CFR part 72, ''Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste, and Reactor-Related Greater Than Class C Waste.'' WCS proposed to construct a Consolidated Interim Storage Facility (CISF) on its approximately 60.3 square kilometer (14,900 acre) site in western Andrews County, Texas. WCS currently operates facilities on this site that process and store Low-Level Waste and Mixed Waste (*i.e.,* waste that is considered both hazardous waste and Low-Level Waste). The facility also disposes of both hazardous waste and toxic waste.

On January 30, 2017, the NRC published two notices in the **Federal Register**: (1) A notice describing the closing date for the scoping period for the Environmental Impact Statement (EIS), and dates, times, and locations of scoping meetings wherein the NRC received oral comments as part of the EIS scoping process (82 FR 8771); and (2) a notice of its acceptance of the WCS application and an opportunity to request a hearing and petition for leave to intervene (82 FR 8773). On March 16, 2017 (82 FR 14039), the NRC published a notice in the **Federal Register** of an extension to the scoping period and

additional public meetings. On April 4, 2017, and in a corrected notice dated April 10, 2017, the NRC published in the **Federal Register** (82 FR 16435; 82 FR 17297) an order granting all petitioners an extension of time until May 31, 2017, to file hearing requests on WCS's license application. On July 20, 2017 (82 FR 33521), the NRC published a notice in the **Federal Register** that WCS had asked NRC to temporarily suspend all safety and environmental review activities. The July 20, 2017, notice in the **Federal Register** withdrew the notice of opportunity to request a hearing for WCS's application and explained that the NRC staff would publish a notice in the **Federal Register** if WCS requested that the NRC staff resume its review of WCS's application.

By letters dated June 8, 2018, and July 19, 2018, NRC received a request from Interim Storage Partners (ISP), a joint venture between WCS and Orano CIS, LLC to resume NRC staff review of the license application for the WCS Consolidated Interim Storage Facility (CISF) in Andrews County, Texas. ISP provided Revision 2 of the License Application, including a revised Safety Analysis Report and Environmental Report. In its June 8, 2018, letter, ISP stated that the Physical Security Plan and Safeguards Contingency Plan submitted with Revision 1 of its License Application remain applicable to the current application. The NRC staff has determined that Revision 1 of the Emergency Plan also remains applicable to the current application. Though ISP is the new owner, the name of the proposed facility remains the WCS CISF.

An NRC administrative completeness review found the revised application acceptable for a technical review. Prior to issuing the license, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (AEA), and the NRC's regulations. The NRC's findings will be documented in a safety evaluation report and an EIS.

II. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR part 2. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. A copy of the regulations is also available at the NRC's Public Document Room, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d), the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

III. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to

submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *http://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click cancel when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

IV. Availability of Documents

The documents identified in this **Federal Register** notice are accessible to interested persons in ADAMS under the accession numbers identified in the table below.

Title	ADAMS accession No.
WCS CISF License Application, Revision 2, with Safety Analysis Report and Environmental Report	ML18206A595
WCS CISF Physical Security Plan, Revision 1, and Safeguards Contingency Plan, and Guard Training and Qualification Plan (redacted).	ML17075A289
WCS submittal of Supplemental Security Information (redacted)	ML16235A467
WCS submittal of Supplemental Security Information (redacted)	ML16280A300
WCS CISF Emergency Plan, Rev. 1	ML17082A054

V. Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing sensitive unclassified information (including Sensitive Unclassified Non-Safeguards Information (SUNSI) and Safeguards Information (SGI)). Requirements for access to SGI are primarily set forth in 10 CFR parts 2 and 73. Nothing in this Order is intended to conflict with the SGI regulations.

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI or SGI is necessary to respond to this notice may request access to SUNSI or SGI. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI or SGI submitted later than 10 days after publication will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requestor shall submit a letter requesting permission to access SUNSI, SGI, or both to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *RidsOgcMailCenter.Resource@nrc.gov* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1);

(3) If the request is for SUNSI, the identity of the individual or entity requesting access to SUNSI and the requestor's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention; and

(4) If the request is for SGI, the identity of each individual who would have access to SGI if the request is granted, including the identity of any expert, consultant, or assistant who will aid the requestor in evaluating the SGI. In addition, the request must contain the following information:

(a) A statement that explains each individual's ''need to know'' the SGI, as required by 10 CFR 73.2 and 10 CFR 73.22(b)(1). Consistent with the definition of ''need to know'' as stated in 10 CFR 73.2, the statement must explain:

(i) Specifically why the requestor believes that the information is necessary to enable the requestor to proffer and/or adjudicate a specific contention in this proceeding; [2] and

(ii) The technical competence (demonstrable knowledge, skill, training, or education) of the requestor to effectively utilize the requested SGI to provide the basis and specificity for a proffered contention. The technical competence of a potential party or its counsel may be shown by reliance on a qualified expert, consultant, or assistant who satisfies these criteria.

(b) A completed Form SF–85, ''Questionnaire for Non-Sensitive Positions,'' for each individual who would have access to SGI. The completed Form SF–85 will be used by the Office of Administration to conduct the background check required for access to SGI, as required by 10 CFR part 2, subpart C, and 10 CFR 73.22(b)(2), to determine the requestor's trustworthiness and reliability. For security reasons, Form SF–85 can only be submitted electronically through the electronic questionnaire for investigations processing (e-QIP) website, a secure website that is owned and operated by the Office of Personnel Management. To obtain online access to the form, the requestor should contact the NRC's Office of Administration at 301–415–3710.[3]

(c) A completed Form FD–258 (fingerprint card), signed in original ink, and submitted in accordance with 10 CFR 73.57(d). Copies of Form FD–258 may be obtained by writing the Office of Administrative Services, Mail Services Center, Mail Stop P1–37, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by email to *MAILSVC.Resource@nrc.gov.* The fingerprint card will be used to satisfy the requirements of 10 CFR part 2, subpart C, 10 CFR 73.22(b)(1), and Section 149 of the Atomic Energy Act of 1954, as amended, which mandates that all persons with access to SGI must be fingerprinted for an FBI identification and criminal history records check.

(d) A check or money order payable in the amount of $324.00 [4] to the U.S. Nuclear Regulatory Commission for each individual for whom the request for access has been submitted.

(e) If the requestor or any individual(s) who will have access to SGI believes they belong to one or more of the categories of individuals that are exempt from the criminal history records check and background check requirements in 10 CFR 73.59, the requestor should also provide a statement identifying which exemption the requestor is invoking and explaining the requestor's basis for believing that the exemption applies. While processing the request, the Office of Administration, Personnel Security Branch, will make a final determination whether the claimed exemption applies. Alternatively, the requestor may contact the Office of Administration for an evaluation of their exemption status prior to submitting their request. Persons who are exempt from the background check are not required to complete the SF–85 or Form FD–258; however, all other requirements for access to SGI, including the need to know, are still applicable.

Note: Copies of documents and materials required by paragraphs C.(4)(b), (c), and (d) of this Order must be sent to the following address: U.S. Nuclear Regulatory Commission, Attn: Personnel Security Branch, Mail Stop TWFN–03–B46M, 11555 Rockville Pike, Rockville, MD 20852.

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI and/or SGI under these procedures should be submitted as described in this paragraph.

[2] Broad SGI requests under these procedures are unlikely to meet the standard for need to know; furthermore, NRC staff redaction of information from requested documents before their release may be appropriate to comport with this requirement. These procedures do not authorize unrestricted disclosure or less scrutiny of a requestor's need to know than ordinarily would be applied in connection with an already-admitted contention or non-adjudicatory access to SGI.

[3] The requestor will be asked to provide his or her full name, social security number, date and place of birth, telephone number, and email address. After providing this information, the requestor usually should be able to obtain access to the online form within one business day.

[4] This fee is subject to change pursuant to the Office of Personnel Management's adjustable billing rates.

These documents and materials should *not* be included with the request letter to the Office of the Secretary, but the request letter should state that the forms and fees have been submitted as required.

D. To avoid delays in processing requests for access to SGI, the requestor should review all submitted materials for completeness and accuracy (including legibility) before submitting them to the NRC. The NRC will return incomplete packages to the sender without processing.

E. Based on an evaluation of the information submitted under paragraphs C.(3) or C.(4) above, as applicable, the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI or need to know the SGI requested.

F. For requests for access to SUNSI, if the NRC staff determines that the requestor satisfies both E.(1) and E.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.[5]

G. For requests for access to SGI, if the NRC staff determines that the requestor has satisfied both E.(1) and E.(2) above, the Office of Administration will then determine, based upon completion of the background check, whether the proposed recipient is trustworthy and reliable, as required for access to SGI by 10 CFR 73.22(b). If the Office of Administration determines that the individual or individuals are trustworthy and reliable, the NRC will promptly notify the requestor in writing. The notification will provide the names of approved individuals as well as the conditions under which the SGI will be provided. Those conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[6] by each individual who will be granted access to SGI.

H. Release and Storage of SGI. Prior to providing SGI to the requestor, the NRC staff will conduct (as necessary) an inspection to confirm that the recipient's information protection system is sufficient to satisfy the requirements of 10 CFR 73.22. Alternatively, recipients may opt to view SGI at an approved SGI storage location rather than establish their own SGI protection program to meet SGI protection requirements.

I. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI or SGI must be filed by the requestor no later than 25 days after receipt of (or access to) that information. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI or SGI contentions by that later deadline.

J. Review of Denials of Access.

(1) If the request for access to SUNSI or SGI is denied by the NRC staff either after a determination on standing and requisite need, or after a determination on trustworthiness and reliability, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) Before the Office of Administration makes a final adverse determination regarding the trustworthiness and reliability of the proposed recipient(s) for access to SGI, the Office of Administration, in accordance with 10 CFR 2.336(f)(1)(iii), must provide the proposed recipient(s) any records that were considered in the trustworthiness and reliability determination, including those required to be provided under 10 CFR 73.57(e)(1), so that the proposed recipient(s) have an opportunity to correct or explain the record.

(3) The requestor may challenge the NRC staff's adverse determination with respect to access to SUNSI or with respect to standing or need to know for SGI by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

(4) The requestor may challenge the Office of Administration's final adverse determination with respect to trustworthiness and reliability for access to SGI by filing a request for review in accordance with 10 CFR 2.336(f)(1)(iv).

(5) Further appeals of decisions under this paragraph must be made pursuant to 10 CFR 2.311.

K. Review of Grants of Access. A party other than the requestor may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed within 5 days of the notification by the NRC staff of its grant of access and must be filed with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[7]

L. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI or SGI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. The attachment to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

[5] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

[6] Any motion for Protective Order or draft Non-Disclosure Agreement or Affidavit for SGI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 180 days of the deadline for the receipt of the written access request.

[7] Requestors should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI/SGI request submitted to the NRC staff under these procedures.

It is so ordered.

Dated at Rockville, Maryland, this 24th of August, 2018.

For the Nuclear Regulatory Commission.

Rochelle C. Bavol, Acting,

Secretary of the Commission.

Attachment 1—General Target Schedule for Processing and Resolving Requests for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information in This Proceeding

Day	Event/activity
0	Publication of **Federal Register** notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non Safeguards Information (SUNSI) and/or Safeguards Information (SGI) with information: Supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding; demonstrating that access should be granted (*e.g.,* showing technical competence for access to SGI); and, for SGI, including application fee for fingerprint/background check.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI and/or SGI (+25 Answers to petition for intervention; +7 requestor/petitioner reply).
20	U.S. Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows (1) need for SUNSI or (2) need to know for SGI. (For SUNSI, NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents). If NRC staff makes the finding of need to know for SGI and likelihood of standing, NRC staff begins background check (including fingerprinting for a criminal history records check), information processing (preparation of redactions or review of redacted documents), and readiness inspections.
25	If NRC staff finds no ''need,'' no ''need to know,'' or no likelihood of standing, the deadline for requestor/petitioner to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds ''need'' for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
190	(Receipt +180) If NRC staff finds standing, need to know for SGI, and trustworthiness and reliability, deadline for NRC staff to file motion for Protective Order and draft Non-disclosure Affidavit (or to make a determination that the proposed recipient of SGI is not trustworthy or reliable). Note: Before the Office of Administration makes a final adverse determination regarding access to SGI, the proposed recipient must be provided an opportunity to correct or explain information.
205	Deadline for petitioner to seek reversal of a final adverse NRC staff trustworthiness or reliability determination under 10 CFR 2.336(f)(1)(iv).
A	If access granted: Issuance of a decision by a presiding officer or other designated officer on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI and/or SGI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI and/or SGI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of opportunity to request a hearing and petition for leave to intervene), the petitioner may file its SUNSI or SGI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI and/or SGI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[FR Doc. 2018–18758 Filed 8–28–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Senior Executive Service Performance Review Board

AGENCY: U.S. Nuclear Waste Technical Review Board.

ACTION: Notice of Performance Review Board membership.

SUMMARY: This notice announces the membership of the Nuclear Waste Technical Review Board (NWTRB) Senior Executive Service (SES) Performance Review Board (PRB).

DATES: August 27, 2018.

FOR FURTHER INFORMATION CONTACT: Neysa M. Slater-Chandler by telephone at 703–235–4480, or via email at *slaterchandler@nwtrb.gov,* or via mail at 2300 Clarendon Blvd., Suite 1300, Arlington, VA 22201.

SUPPLEMENTARY INFORMATION: 5 U.S.C. 4314(c)(1) through (5) requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES Performance Review Boards.

The PRB shall review and evaluate the initial summary rating of a senior executive's performance, the executive's response, and the higher-level official's comments on the initial summary rating. In addition, the PRB will review

and recommend executive performance bonuses and pay increases.

5 U.S.C. 4314(c)(4) requires the appointment of board members to be published in the **Federal Register**. The following persons comprise a standing roster to serve as members of the SES PRB for the U.S. Nuclear Waste Technical Review Board:

Laura Dudes, Deputy Regional Administrator, Nuclear Regulatory Commission, Region II, Atlanta, GA

Raymond Lorson, Director, Division of Reactor Projects, Nuclear Regulatory Commission, Region I, King of Prussia, PA

Katherine R. Herrera, Technical Director, Defense Nuclear Facilities Safety Board, Washington, DC

Timothy J. Dwyer, Associate Technical Director for Nuclear Materials Processing and Stabilization, Defense Nuclear Facilities Safety Board, Washington, DC

Richard E. Tontodonato, Associate Technical Director for Nuclear Weapon Programs, Defense Nuclear Facilities Safety Board, Washington, DC

Authority: 42 U.S.C. 10262.

Dated: August 22, 2018.

Neysa M. Slater-Chandler,

Director of Administration, U.S. Nuclear Waste Technical Review Board.

[FR Doc. 2018–18726 Filed 8–28–18; 8:45 am]

BILLING CODE 6820–AM–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83916; File No. SR–OCC–2017–020]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change, as Modified by Amendment No. 2, Concerning Enhanced and New Tools for Recovery Scenarios

August 23, 2018.

I. Introduction

On December 18, 2017, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–OCC–2017–020 (''Proposed Rule Change'') pursuant to Section 19(b) of the Securities Exchange Act of 1934 (''Exchange Act''),[1] and Rule 19b–4 [2] thereunder concerning enhanced and new tools for recovery scenarios.[3] The Proposed Rule Change was published for comment in the **Federal Register** on December 26, 2017.[4] On January 25, 2018, the Commission designated a longer period of time for Commission action on the Proposed Rule Change.[5] On March 22, 2018, the Commission published an order to institute proceedings to determine whether to approve or disapprove the Proposed Rule Change.[6]

On July 11, 2018, OCC filed Amendment No. 1 to the Proposed Rule Change.[7] On July 12, 2018, OCC filed Amendment No. 2 to the Proposed Rule Change.[8] Therefore, the Proposed Rule Change, as modified by Amendment No. 2, reflects the changes proposed. Notice of Amendments No. 1 and 2 to the Proposed Rule Change was published for public comment in the **Federal Register** on August 2, 2018.[9] Comments received on the Proposed Rule Change are discussed below.[10] This order approves the Proposed Rule Change as modified by Amendment No. 2 (''Amended Proposed Rule Change'').

II. Description of the Amended Proposed Rule Change [11]

The Amended Proposed Rule Change concerns proposed changes to OCC's Rules and By-Laws to enhance OCC's existing tools to address the risks of liquidity shortfalls and credit losses and to establish new tools by which OCC could re-establish a matched book and, if necessary, allocate uncovered losses following the default of a Clearing Member as well as provide for additional financial resources. Each of the proposed tools is contemplated to be deployed by OCC in an extreme stress event that has placed OCC into a recovery or orderly wind-down scenario. The proposed changes include modifying OCC's powers of assessment, introducing a framework for requesting voluntary payments to the Clearing Fund, and establishing OCC's authority to extinguish open positons (*i.e.,* conduct tear-ups) as well as authorizing OCC's Board of Directors (''Board'') to re-allocate losses from tear-ups.

A. Proposed Changes to OCC Powers of Assessment

OCC maintains a Clearing Fund comprised of required contributions from Clearing Members, and OCC has authority to use the Clearing Fund, by a proportionate charge or otherwise, to cover certain losses suffered by OCC.[12] When an amount is paid out of a Clearing Member's required contribution to the Clearing Fund, the Clearing Member is generally required to promptly make good any deficiency in its required contribution to the Clearing Fund from such payment.[13] Generally, this requirement to promptly make good on any deficiency arising from the default of a Clearing Member has been referred to as an ''assessment'' by OCC against a Clearing Member; however, as further described below, OCC is making clarifying changes to a Clearing Member's obligation to contribute to the Clearing Fund, including defining and delineating between a Clearing Member's obligation

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Notice *infra* note 4, 82 FR 61107.

[4] Securities Exchange Act Release No. 82531 (Dec. 19, 2017), 82 FR 61107 (Dec. 26, 2017) (SR–OCC–2017–020) (''Notice''). On December 8, 2017, OCC also filed a related advance notice (SR–OCC–2017–809) (''Advance Notice'') with the Commission pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled the Payment, Clearing, and Settlement Supervision Act of 2010 and Rule 19b–4(n)(1)(i) under the Exchange Act. 12 U.S.C. 5465(e)(1) and 17 CFR 240.19b–4(n)(1)(i), respectively. The Advance Notice was published in the **Federal Register** on January 23, 2018. Securities Exchange Act Release No. 82513 (Jan. 17, 2017), 83 FR 3244 (Jan. 23, 2018) (SR–OCC–2017–809).

The Financial Stability Oversight Council designated OCC a systemically important financial market utility on July 18, 2012. *See* Financial Stability Oversight Council 2012 Annual Report, Appendix A, *available at http://www.treasury.gov/initiatives/fsoc/Documents/2012%20Annual%20Report.pdf*. Therefore, OCC is required to comply with the Payment, Clearing and Settlement Supervision Act and file advance notices with the Commission. *See* 12 U.S.C. 5465(e).

[5] Securities Exchange Act Release No. 82585 (Jan. 25, 2018), 83 FR 4526 (Jan. 31, 2018) (File No. SR–OCC–2017–020).

[6] Securities Exchange Act Release No. 82926 (Mar. 22, 2018), 83 FR 13171 (Mar. 27, 2018) (File No. SR–OCC–2017–020).

[7] In Amendment No. 1, OCC made certain changes to clarify the use of the recovery tools and to improve the overall transparency regarding the use of the recovery tools.

[8] Amendment No. 2 superseded and replaced Amendment No. 1 in its entirety, due to technical defects in Amendment No. 1.

[9] Securities Exchange Act Release No. 83725 (Jul. 27, 2018), 83 FR 37839 (Aug. 2, 2018) (''Notice of Amendment'').

[10] The letters are available at: *https://www.sec.gov/comments/sr-occ-2017-022/occ2017020.htm.*

[11] Capitalized terms used but not defined herein have the meanings specified in OCC's Rules and By-Laws, *available at https://www.theocc.com/about/publications/bylaws.jsp.*

[12] *See* OCC By-Laws, Article VIII. For example, under Section 5 of Article VIII of the OCC By-Laws, when a Clearing Member defaults, OCC will pay for the resulting losses or expenses by first applying other funds available to OCC in the accounts of the defaulting Clearing Member and then applying the defaulting Clearing Member's required contribution to the Clearing Fund. If the losses and expenses exceed those amounts, then OCC will charge the amount of the remaining deficiency on a proportionate basis against all non-defaulting Clearing Members' required contributions to the Clearing Fund.

[13] *See* OCC By-Laws, Article VIII, Section 6.

to answer ''assessments'' charged by OCC under certain circumstances described further below and a Clearing Member's obligations where OCC seeks to effect a ''replenishment'' of the Clearing Fund.

Currently, a Clearing Member's obligation to make good its required contribution to the Clearing Fund is not subject to any pre-determined limit. However, a Clearing Member may limit the amount of its liability to contribute to the Clearing Fund by winding-down its clearing activities and terminating its membership. To do so, a Clearing Member must provide written notice to OCC that it is terminating its membership by no later than the fifth business day after application of the proportionate charge.[14] This termination would limit the Clearing Member's obligation to meet a future assessment to an additional 100 percent of the amount of its then-required Clearing Fund contribution. Thus, terminating clearing membership is the only means by which a Clearing Member can currently limit its liability for amounts due to the Clearing Fund. OCC proposed three changes to modify its existing authority to assess proportionate charges against Clearing Members' required contributions to the Clearing Fund: (1) A cooling-off period and cap on assessments; (2) termination of clearing membership during a cooling-off period; and (3) replenishment of resources following a cooling-off period.

1. Cooling-Off Period and Cap on Assessments

The proposal would introduce a minimum fifteen calendar day ''cooling-off'' period that automatically begins when OCC imposes a proportionate charge related to the default of a Clearing Member against non-defaulting Clearing Members' Clearing Fund contributions. During a cooling-off period, the aggregate liability for a Clearing Member would be capped at 200 percent of its then-required contribution to the Clearing Fund. The cooling-off period would be extended if one or more specific events related to the default of a Clearing Member (as set forth in OCC's By-laws) [15] occur(s) during that fifteen calendar day period and results in one or more proportionate charges against the Clearing Fund. Such an extension would run until the earlier of (i) the fifteenth calendar day from the date of the most recent proportionate charge resulting from that subsequent event, or (ii) the twentieth day from the date of the proportionate charge that initiated the cooling-off period.

Once the cooling-off period ends, each remaining Clearing Member would be required to replenish the Clearing Fund in the amount necessary to meet its then-required contribution. Any remaining losses or expenses suffered by OCC as a result of any events that occurred during that cooling-off period could not be charged against the amounts Clearing Members have contributed to replenish the Clearing Fund upon the expiration of the cooling-off period. However, after the end of a cooling-off period, the occurrence of another specified event that results in a proportionate charge against the Clearing Fund would trigger a new cooling-off period.

2. Membership Termination During a Cooling-Off Period

As noted above, to limit its liability to replenish the Clearing Fund, a Clearing Member currently must provide written notice of its intent to terminate its clearing membership by no later than the fifth business day after a proportionate charge. OCC's proposal would extend the time frame for a Clearing Member to provide such notice of termination, which would allow the terminating Clearing Member to avoid liability to replenish the Clearing Fund after the cooling-off period. Specifically, to terminate its status as a Clearing Member and not be liable for replenishment at the end of a cooling-off period, a Clearing Member would be required to: (i) Notify OCC in writing of its intent to terminate by no later than the last day of the cooling-off period, (ii) not initiate any opening purchase or opening writing transaction, and, if the Clearing Member is a Market Loan Clearing Member or a Hedge Clearing Member, not initiate any Stock Loan transaction through any of its accounts, and (iii) close-out or transfer all open positions by no later than the last day of the cooling-off period. If a Clearing Member fails to satisfy all of these conditions by the end of a cooling-off period, it would not have completed all of the requirements necessary to terminate its status as a Clearing Member, and therefore, it would remain subject to its obligation to replenish the Clearing Fund after the cooling-off period ends.

Given the products cleared by OCC and the composition of its clearing membership, OCC determined that a minimum 15-calendar day cooling-off period, rolling up to a maximum of 20 calendar days, is likely to be a sufficient amount of time for OCC to manage the ongoing default(s) and take necessary steps in furtherance of stabilizing the clearing system. Further, based on its conversations with Clearing Members, OCC believes that the proposed cooling-off period is likely to be a sufficient amount of time for Clearing Members (and their customers) to orderly reduce or rebalance their positions, in an attempt to mitigate stress losses and exposure to potential initial margin increases during the stress event.[16] OCC also believes the proposed cooling-off period, coupled with the other proposed changes to OCC's assessment powers, is likely to provide Clearing Members with an adequate measure of stability and predictability as to the potential use of Clearing Fund resources, which would, according to OCC, remove the existing incentive for Clearing Members to withdraw following a proportionate charge (*i.e.,* to avoid facing potentially unlimited liability for replenishing the Clearing Fund).

3. Replenishment and Assessment

The proposal would clarify the distinction between ''replenishment'' of the Clearing Fund and a Clearing Member's obligation to answer ''assessments'' charged by OCC. In this context, the term ''replenish'' (and its variations) would refer to a Clearing Member's standing duty, following any proportionate charge against the Clearing Fund, to return its Clearing Fund contribution to the amount required from such Clearing Member for the month in question. The term ''assessment'' (and its variations) would refer to the amount, during any cooling-off period, that a Clearing Member

[14] In addition to providing the written notice, to effectively terminate membership, a Clearing Member must satisfy two other conditions. First, after submitting the written notice, the Clearing Member cannot submit for clearance any opening purchase transaction or opening written transaction or initiate a Stock Loan through any of the Clearing Member's accounts. Second, the Clearing Member has to close out or transfer all of its open positions with OCC, in each case as promptly as practicable after giving written notice. *See* OCC By-Laws, Article VIII, Section 6.

[15] Specifically, a cooling-off period would automatically begin after a proportionate charge arises in response to: (i) Any Clearing Member failure to discharge duly any obligation on or arising from any confirmed trade accepted by OCC, (ii) any Clearing Member (including any Appointed Clearing Member) failure to perform any obligations (including its obligations to the correspondent clearing corporation) under or arising from any exercised or assigned option contract or any other contract or obligation issued or guaranteed by OCC or in respect of which it is otherwise liable, (iii) any Clearing Member failure to perform any obligation to OCC in respect of the stock loan and borrow positions of such Clearing Member, or (iv) OCC suffered any loss or expense upon any liquidation of a Clearing Member's open positions. *See* OCC By-Laws, Article VIII, Section 5(a)(i) 09(iv).

[16] *See* Notice of Amendment, 83 FR at 37847.

would be required to contribute to the Clearing Fund in excess of the amount of the Clearing Member's pre-funded required Clearing Fund contribution.

B. Proposed Authority To Request Voluntary Payments

OCC proposed new Rule 1011 to provide a framework for receipt of voluntary payments in a circumstance where a Clearing Member has defaulted and OCC has determined that it may not have sufficient resources to satisfy its obligations and liabilities resulting from such default.[17] OCC would initiate a call for voluntary payments by issuing a notice inviting all non-defaulting Clearing Members to make payments to the Clearing Fund in addition to any amounts they are otherwise required to contribute pursuant to Rule 1001 (''Voluntary Payment Notice''). The Voluntary Payment Notice would specify the terms applicable to any voluntary payment, including but not limited to, that any voluntary payment may not be withdrawn once made, that no Clearing Member shall be obligated to make a voluntary payment, and that OCC shall retain full discretion to accept or reject any voluntary payment.

In the event that OCC eventually obtains additional financial resources from the defaulting Clearing Member, OCC would give priority to repayment of Clearing Members that made Voluntary Payments. Specifically, if OCC subsequently recovers from the defaulted Clearing Member or the estate of the defaulted Clearing Member, OCC would seek to first compensate all non-defaulting Clearing Members that made voluntary payments.[18] If the amount recovered from the defaulted Clearing Member were less than the aggregate amount of voluntary payments, non-defaulting Clearing Members that made voluntary payments each would receive a percentage of the amount recovered that corresponds to that Clearing Member's percentage of the total amount of voluntary payments received.

C. Proposed Authority to Conduct Voluntary Tear-Ups and Partial Tear-Ups

OCC proposed new Rule 1111 to establish a framework to extinguish positions of a suspended or defaulted Clearing Member on a voluntary basis (''Voluntary Tear-Up'') or on a mandatory basis (''Partial-Tear Up'') and, in certain extreme circumstances, to allocate any uncovered losses in the event that OCC does not have sufficient financial resources to conduct the tear-up. A Voluntary Tear-Up, if provided, would precede a Partial-Tear Up, and any Partial Tear-Up would take into account any positions extinguished as part of a Voluntary Tear-Up. Further, Rule 1111(h) would provide that no action or omission by OCC pursuant to, and in accordance with, Rule 1111 shall constitute a default by OCC, provided that Rule 1111(h) would not apply where OCC pays Clearing Members a pro rata amount of the applicable Tear-Up price because OCC does not have adequate resources to pay the full Tear-Up price.

OCC's use of both Voluntary and Partial Tear-Up would be subject to certain prerequisites. First, any tear-up would occur after one or more failed auctions pursuant to Rule 1104 or 1106. Second, any tear-up would occur after OCC has determined that it may not have sufficient resources to satisfy its obligations and liabilities resulting from such default.[19]

OCC represented that it would initiate its tear-up process on a date sufficiently in advance of the exhaustion of its financial resources such that OCC would expect to have adequate remaining resources to cover the amount it must pay to extinguish the positions of Clearing Members and customers.[20] The holders of torn-up positions would be assigned a price, and OCC would draw on its remaining financial resources to extinguish the torn-up positions at the assigned price. Although OCC does not intend, in the first instance, for its tear-up process to serve as a means of loss allocation, OCC recognizes that circumstances may arise such that, despite its best efforts, OCC may not have adequate remaining financial resources to extinguish torn-up positions at the full assigned price, resulting in the allocation of uncovered losses by the tear-up process. As further described below, a Clearing Member allocated an uncovered loss would then have an unsecured claim against OCC for the value of the difference between the pro rata amount paid to the Clearing Member and the full amount the Clearing Member should have received.

1. Voluntary Tear-Up

As noted above, a Voluntary Tear-Up would provide an opportunity to holders of certain positions opposite a defaulting Clearing Member to voluntarily extinguish those positions. Although the Risk Committee of OCC's Board of Directors (''Risk Committee'') approval is not necessary to commence a Voluntary Tear-Up, the Risk Committee would be responsible for determining the scope of a Voluntary Tear-Up. Proposed Rule 1111(c) would provide discretion to the Risk Committee when determining the appropriate scope, but the discretion would be subject to, and limited by, certain conditions, *i.e.,* that the determination should be (i) based on then-existing facts and circumstances, (ii) be in furtherance of the integrity of OCC and the stability of the financial system, and (iii) take into consideration the legitimate interests of Clearing Members and market participants.

Once the Risk Committee has determined the scope, OCC would initiate the call for Voluntary Tear-Ups by issuing a notice (''Voluntary Tear-Up Notice'') to inform all non-defaulting Clearing Members of the opportunity to participate in a Voluntary Tear-Up.[21] The Voluntary Tear-Up Notice would specify the terms applicable to any Voluntary Tear-Up, including, but not limited to, that no Clearing Member or customers of a Clearing Member shall be obligated to participate in a Voluntary Tear-Up, and that OCC shall retain full discretion to accept or reject any Voluntary Tear-Up.

Clearing Members and their customers that participated in a Voluntary Tear-Up and incurred losses would have a claim to amounts subsequently recovered from a defaulted Clearing Member (or the estate of the defaulted Clearing Member). The claim would be junior to Clearing Members who made a voluntary payment to the

[17] OCC's determination would be made notwithstanding availability of remaining resources under Rules 707 (addressing the treatment of funds in a Clearing Member's X–M accounts); 1001 (addressing the size of OCC's Clearing Fund and the amount of a Clearing Member's contribution); 1104–1107 (concerning the treatment of the portfolio of a defaulted Clearing Member); and 2210 and 2211 (concerning the treatment of Stock Loan positions of a defaulted Clearing Member).

[18] As discussed further in Section II.C.1 below, OCC's proposed authority with respect to Voluntary Payments and Voluntary Payments would work together to establish a hierarchy of repayment in the event that OCC subsequently recovers from the defaulted Clearing Member. Under proposed rules 1011(b) and 1111(a)(ii), OCC would first seek to compensate those non-defaulting Clearing Members who had submitted Voluntary Payments and, thereafter, to the extent funds remained, OCC would then seek to compensation those non-defaulting Clearing Members who had participated in the Voluntary Tear-Up.

[19] As with Voluntary Payments, this determination would be made notwithstanding availability of remaining resources under Rules 707, 1001, 1104–1107, 2210, and 2211. *See* note 17 *supra.*

[20] Specifically, OCC stated that it anticipated that it would determine the date on which to initiate Partial Tear-Ups by monitoring its remaining financial resources against the potential exposure of the remaining unauctioned positions from the portfolio(s) of the defaulted Clearing Member(s).

[21] Because OCC does not know the identities of Clearing Members' customers, OCC would depend on each Clearing Member to notify its customers with positions in scope of the Voluntary Tear-Up of the opportunity to participate in such tear-up.

Clearing Fund, and OCC would satisfy the claims on a pro-rata basis.

2. Partial Tear-Up

Under proposed Rule 1111(b), OCC's Board would be responsible for the decision to conduct a mandatory Partial Tear-Up. The Risk Committee would then be responsible for determining the appropriate scope of the Partial Tear-Up, subject to the conditions in Rule 1111(c) discussed above.

The proposed rule would also provide the Board with the discretion to conduct a mandatory Partial Tear-Up to extinguish the remaining open positions of any defaulted Clearing Member or customer of such defaulted Clearing Member(s) (''Remaining Open Positions'') and/or any related open positions necessary to mitigate further disruptions to the markets affected by the Remaining Open Positions (''Related Open Positions''). The open positions subject to tear-up opposite to the Remaining Open Positions and the Related Open Positions would be designated in accordance with the methodology in Rule 1111(e). Specifically, for Remaining Open Positions, the aggregate amount in the identical Cleared Contracts and Cleared Securities would be designated on a pro-rata basis to non-defaulting Clearing Members that have an open position in such Cleared Contract or Cleared Security. For Remaining Open Positions, all open positions in Cleared Contracts and Cleared Securities identified in the scope of the Partial Tear-Up would be extinguished.

After the scope of the Partial Tear-Up is determined, OCC would initiate the Partial Tear-Up process by issuing a notice (''Partial Tear-Up Notice''). The Partial Tear-Up Notice would: (i) Identify the Remaining Open Positions and Related Open Positions designated for tear-up, (ii) identify the Tear-Up Positions, (iii) specify the termination price (''Partial Tear-Up Price'') for each position to be torn-up, and (iv) list the date and time, as determined by the Risk Committee, that the Partial Tear-Up will occur (''Partial Tear-Up Time'').

Rule 1111(f) would provide that, to determine the Partial Tear-Up Price, OCC would use its discretion, acting in good faith and in a commercially reasonable manner, to adopt methods of valuation expected to produce reasonably accurate substitutes for the values that would have been obtained from the relevant market if it were operating normally, including but not limited to the use of pricing models that use the market price of the underlying interest or the market prices of its components. Rule 1111(f) further specifies that OCC may consider the same information set forth in subpart (c) of Section 27, Article VI of OCC's By-Laws.[22] OCC stated that it is likely to use the last established end-of-day settlement price, in accordance with its existing practices concerning pricing and valuation. However, given that it is not possible to know in advance the precise circumstances that would cause OCC to conduct a tear-up, Rule 1111(f) would allow OCC to exercise reasonable discretion, if necessary, in establishing the Partial Tear-Up Price by some means other than its existing practices concerning pricing and valuation. For example, OCC represented that it has observed certain rare circumstances in which a closing price for an underlying security of an option may be stale or unavailable. A stale or unavailable closing price could be the result of a halt on trading in the underlying security, a corporate action resulting in a cash-out or conversion of the underlying security (but that has not yet been finalized), or the result of an ADR whose underlying security is being impacted by certain provisions under foreign laws. OCC stated it would consider these circumstances in determining whether use of the discretion that would be afforded under proposed Rule 1111(f) might be warranted.[23]

Every Partial Tear-Up position would be automatically terminated at the Partial Tear-Up Time, without the need for any further step by any party to the position. Upon termination, either OCC or the relevant Clearing Member would be obligated to pay to the other party the applicable Partial Tear-Up Price. The corresponding open position would be deemed terminated at the Partial Tear-Up Price. In the event that, given the amount of remaining resources, OCC would not be able to pay the full Partial Tear-Up Price, OCC would pay each torn-up Clearing Member a pro-rata amount of the applicable Partial Tear-Up Price based on the amounts of such resources remaining. Those Clearing Members would then have an unsecured claim against OCC for the value of the difference between the pro rata amount and the Partial Tear-Up Price.

3. Re-Allocating Losses From Tear-Up

The proposed changes would provide OCC with means to re-allocate losses, costs, and expenses associated with the tear-up process. First, the proposal would amend Article VIII of the By-Laws to provide OCC discretion to use remaining Clearing Fund contributions to re-allocate losses imposed on non-defaulting Clearing Members and customers from tear-up. Second, in connection with a Partial Tear-Up, proposed Rule 1111(g) would provide the Board with discretion to re-allocate losses, costs, and fees imposed upon non-defaulting Clearing Members and their customers among all non-defaulting Clearing Members to the extent that such losses, costs, and fees can be reasonably determined by OCC (''Special Charge''). The Special Charge would correspond to each non-defaulting Clearing Member's proportionate share of the variable amount of the Clearing Fund at the time of the Partial Tear-Up. The Special Charge would be distinct and separate from a Clearing Member's obligation to satisfy Clearing Fund assessments during a cooling-off period and, therefore, not subject to the cap on assessments.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Exchange Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to such organization.[24] After carefully considering the Amended Proposed Rule Change, the Commission believes the proposal is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to OCC. More specifically, the Commission finds that the Amended Proposed Rule Change is consistent with Section 17A(b)(3)(F) of the Exchange Act[25] and Rules 17Ad–22(e)(2)(i), (iii), and (v), (e)(4)(viii) and

[22] Section 27, Article VI addresses the valuation of positions that may be subject to close-out netting in the event of OCC's insolvency or default. Specifically, it states that in determining a close-out amount, OCC may consider any information that it deems relevant, including, but not limited to, any of the following factors: (i) Prices for underlying interests in recent transactions, as reported by the market or markets for such interests; (ii) quotations from leading dealers in the underlying interest, setting forth the price (which may be a dealing price or an indicative price) that the quoting dealer would charge or pay for a specified quantity of the underlying interest; (iii) relevant historical and current market data for the relevant market, provided by reputable outside sources or generated internally; and (iv) values derived from theoretical pricing models using available prices for the underlying interest or a related interest and other relevant data.

[23] *See* Letter from Joseph P. Kamnik, Sr. Vice President and CRO, OCC, to Brent Fields, Secretary, Commission, at 5 (Jul. 9, 2018) (''OCC Letter'').

[24] 15 U.S.C. 78s(b)(2)(C).

[25] 15 U.S.C. 78q–1(b)(3)(F).

(ix), (e)(13), and (e)(23)(i) and (ii) thereunder.[26]

A. Consistency With Section 17A(b)(3)(F) of the Exchange Act

Section 17A(b)(3)(F) of the Exchange Act requires that the rules of a clearing agency be designed to, among other things, promote the prompt and accurate clearance and settlement of securities transactions, assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, and, in general, to protect investors and the public interest.[27]

OCC is the sole registered clearing agency for the U.S. listed options markets. In general, OCC maintains equal and opposite obligations on cleared positions (commonly referred to as a matched book). In an extreme loss event caused by a Clearing Member default, re-establishing a matched book as quickly as possible is essential because it would allow OCC to continue clearing and settling securities transactions as a central counterparty. In addition, allocating uncovered losses is important in such an event because it would allow OCC to provide further certainty to Clearing Members, their customers, and other stakeholders about how it addresses such losses and avoid a disorderly resolution to such an event. Thus, taken together, the Commission believes that the new and amended authority granted to OCC specific to the context of extreme loss events and described in the Amended Proposed Rule Change should provide OCC with the ability to re-establish a matched book, allocate uncovered losses if necessary, and limit OCC's potential exposure to losses from such an event, all of which would be essential to OCC's ability to continue promptly and accurately clearing securities transactions in the event that an extreme market event places OCC in a recovery scenario.

Further, the Commission believes that the proposed changes would provide a reasonable amount of clarity and specificity to Clearing Members, their customers, and other stakeholders about the potential tools that would be expected to be available to OCC if such an event occurred, and the consequences that might arise from OCC's application of such tools. Because of this increased clarity and specificity, OCC's Clearing Members, their customers, and other stakeholders should have more information regarding their potential exposure and liability to OCC in an extreme loss event. Accordingly, the Commission believes that the proposed changes should allow Clearing Members, their customers, and other stakeholders to better evaluate the risks and benefits of clearing transactions at OCC because the proposed changes result in those parties having more information and specificity regarding the actions that OCC could take in response to an extreme loss event. To the extent that Clearing Members, their customers, and other stakeholders are able to use this increased clarity and specificity to better manage their potential exposure and liability in clearing transactions at OCC, such parties should be able to mitigate the likelihood that such tools could surprise or otherwise destabilize them. For these reasons, the Commission believes that the proposed rules providing for such clarity and specificity are designed, in general, to protect investors and the public interest.

It is important for OCC to implement measures, including measures designed to facilitate OCC's ability to address risks and obligations arising in the specific context of extreme loss events, that enhance OCC's ability to address losses and to avoid threatening its ability to safeguard securities and funds within OCC's custody or control. OCC's proposed modified assessment powers would impose a cap on a Clearing Member's potential liability to replenish the Clearing Fund following a particular default event and extend the timeframe during which a Clearing Member must determine whether to terminate its membership and avoid further losses. Taken together, the Commission believes that these tools are reasonably designed to provide OCC with sufficient financial resources to cover default losses and ensure that OCC can take timely actions to contain losses and continue meeting its obligations in the event of a Clearing Member default. Similarly, the Commission believes that these changes would provide Clearing Members and their customers with greater certainty and predictability regarding the amount of losses they must bear as a result of a Clearing Member default. For these reasons, the Commission believes that the Amended Proposed Rule Change is designed to assure the safeguarding of securities and funds in OCC's custody or control.

Additionally, OCC's proposed authority to conduct tear-ups would provide OCC with a mechanism for restoring a matched book and, in the event that OCC did not have sufficient financial resources to pay the full Partial Tear-Up Price, allocate losses to the non-defaulting Clearing Members. The Commission recognizes that a tear-up would result in termination of positions of non-defaulting Clearing Members. However, because under the proposed rules OCC would only be able to use its tear-up authority after it has conducted an auction pursuant to its Rules and when OCC has determined that it may not have sufficient financial resources to meet its obligations, a tear-up would only arise in an extreme stress scenario. Use of tear-up in such circumstances could potentially return OCC to a matched book quickly, thereby containing its losses and avoiding OCC's and its Clearing Members' exposure to additional losses. OCC's proposal would also address the determination of the Partial Tear-Up Price. Specifically, OCC would determine a Partial Tear-Up Price by using its discretion, acting in good faith and in a commercially reasonable manner, to adopt methods of valuation expected to produce reasonably accurate substitutes for the values that would have been obtained from the relevant market if it were operating normally, including but not limited to the use of pricing models that use the market price of the underlying interest or the market prices of its components. The Commission believes that OCC's proposed authority to conduct tear-ups could facilitate its ability to return to a matched book quickly and, in an extreme event, allocate losses. This, in turn, could help ensure that OCC is able to continue providing its critical clearing functions by facilitating the timely containment of default losses and liquidity pressures, thereby helping to prevent OCC from failing in such an event, and is therefore consistent with promoting the prompt and accurate clearance and settlement of securities transactions.

One commenter states that the Partial Tear-Up Price should be determined objectively and not on a discretionary basis.[28] In the OCC Letter, OCC states that, in the event that it has to determine a Partial Tear-Up Price, OCC anticipates that it is likely to use the last established end-of-day settlement price, in accordance with its existing practices concerning pricing and valuation, but notes that discretion may be necessary in the circumstances likely to be associated with an extreme loss event necessitating a tear-up where the end-of-day closing price may be stale or

[26] 17 CFR 240.17Ad–22(e)(2)(i), (iii), and (v), (e)(4)(viii) and (ix), (e)(13), and (e)(23)(i) and (ii).

[27] 15 U.S.C. 78q–1(b)(3)(F).

[28] *See* Letter from Jacqueline H. Mesa, Sr. Vice President of Global Policy, Futures Industry Association, to Brent Fields, Secretary, Commission, at 2; available at *https://www.sec.gov/comments/sr-occ-2017-022/occ2017020.htm* (Jan. 16, 2018) (''FIA Letter'').

unavailable.[29] Further, the Commission notes that, under OCC's proposed rule, OCC would not have unfettered discretion to determine the appropriate price. Rather, OCC's discretion would be limited by two conditions. Specifically, in the event that OCC uses its discretion to determine a Partial Tear-Up Price, it will be required under OCC's proposed rule to do so (i) in good faith and (ii) in a commercially reasonable manner.[30] The Commission believes that this discretion, as limited by the two specified conditions, is appropriate given that it is not possible to know the precise circumstances likely to be associated with an extreme loss event necessitating a tear-up, and, therefore, the limited discretion provided for in the proposed rule may be appropriate in such circumstances. The Commission also notes that, in the event that OCC is using its authority to conduct a Partial Tear-Up, OCC would provide notification to the Commission and other regulators.[31] Accordingly, the Commission does not believe that this aspect of the proposal is inconsistent with the Exchange Act.

Finally, OCC's proposal would also introduce methods of re-allocating losses after a tear-up. First, the revised By-Laws would allow OCC discretion to use remaining Clearing Fund contributions to re-allocate losses imposed on non-defaulting Clearing Members and their customers from a tear-up. Second, the revised Rules would provide the Board with the discretion to re-allocate losses among all non-defaulting members via a Special Charge, to the extent that such losses can be reasonably determined. As such, the Commission believes that these tools, and the associated governance, are designed to give OCC the ability to re-allocate the losses in a fair and equitable manner after an extreme market event, and, in general, to protect investors and the public interest.

One commenter states that the power to impose the Special Charge in connection with a Partial Tear-Up potentially could impose costs onto non-defaulting Clearing Members that did not have an opposing position from a defaulting Clearing Member. According to the commenter, the Special Charge could, in effect, be another assessment against all Clearing Members, which could create unquantifiable and unmanageable risks to Clearing Members. Moreover, the commenter states that the discretion afforded the Board may result in the Special Charge being capriciously applied. For these reasons, the commenter believes that the costs associated with a Partial Tear-Up should not be transferrable to unaffected Clearing Members.[32]

Under the terms of the proposed rule, the Special Charge could only be used when the losses, costs, and fees imposed upon non-defaulting Clearing Members and their customers directly resulting from a Partial Tear-Up reasonably can be determined by OCC. Further, if it were used, the Special Charge would correspond to each non-defaulting Clearing Member's proportionate share of the Clearing Fund at the time of the Partial Tear-Up. Thus, the Commission does not believe that OCC would be permitted under the proposed rule to engage in unlimited assessments because the amount of the Special Charge must be subject to a reasonable determination, and the Special Charge would then correspond to the non-defaulting Clearing Member's proportionate share of the Clearing Fund. These aspects of the Special Charge should help ensure that OCC does not apply the tool capriciously and that the Board would use the Special Charge in these delineated circumstances, *i.e.,* when the amount of the losses was reasonably determinable. For these reasons, the Commission does not believe that the Special Charge is inconsistent with the Exchange Act.

Therefore, the Commission believes that the proposed rule changes would promote the prompt and accurate clearance and settlement of securities transactions, assure the safeguarding of securities and funds in OCC's custody and control, and, in general, protect investors and the public interest, consistent with Section 17A(b)(3)(F) of the Exchange Act.[33]

B. Consistency With Rule 17Ad–22(e)(2)(i), (iii), and (v), Rule 17Ad–22(e)(4)(viii) and (ix), Rule 17Ad–22(e)(13), and Rule 17Ad–22(e)(23)(i) and (ii) Under the Exchange Act

1. Governance

Rule 17Ad–22(e)(2) requires, in relevant part, that OCC establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent; support the public interest requirements of Section 17A of the Exchange Act applicable to clearing agencies, and the objectives of owners and participants; and specify clear and direct lines of responsibility.[34]

The proposal, taken together with existing OCC Rules, specifies the governance that would apply to use of each of the recovery tools. Specifically, with respect to the modified powers of assessment, the cooling-off period would commence automatically upon a number of events specified in the By-Laws. The use of Voluntary Payments and either Voluntary or Partial Tear-Up cannot occur unless OCC has determined that it may not have sufficient resources available to satisfy its obligations after a default. In addition, the proposal specifies the applicable decision-making body that would be responsible for determining whether to conduct a tear-up. Specifically, for a Voluntary Tear-Up, OCC would be able to make that determination, and for a Partial Tear-Up, which is mandatory, Board action is required. The Risk Committee would be responsible for determining the scope of the tear-ups, and any such determinations must take into account certain considerations. Only the Board may elect to impose a Special Charge to reallocate losses, costs, and fees from a Partial Tear-Up.

Thus, key decisions by OCC in connection with the use of its proposed recovery tools are subject to specific governance processes. These requirements include the involvement of the Risk Committee in determining the scope and pricing for any Partial Tear-up and specifically require Board approval with respect to instituting Partial Tear-Up and authorizing the Special Charge. Accordingly, the Commission believes that the governance process for using the recovery tools is clear and transparent and provides clear and direct lines of responsibility by addressing decision making in the use of recovery tools, thereby supporting the public interest requirements of Section 17A of the Exchange Act applicable to clearing agencies, and the objectives of owners and participants, and therefore the Commission believes that the proposed rule change is consistent with Rule 17Ad–22(e)(2)(i), (iii), and (v).[35]

[29] *See* OCC Letter at 5. According to OCC, a stale or unavailable closing price could be the result of a halt on trading in the underlying security, a corporate action resulting in a cash-out or conversion of the underlying security (but that has not yet been finalized), or the result of an ADR whose underlying security is being impacted by certain provisions under foreign laws. *See id.*

[30] *See also id.* at 5.

[31] *See* Securities Exchange Act Release No. 83918 (Aug. 23, 2018) at note 19 (SR–OCC–2017–021).

[32] *See* FIA Letter at 2.

[33] 15 U.S.C. 78q–1(b)(3)(F).

[34] 17 CFR 240.17Ad–22(e)(2)(i), (iii), and (v).

[35] 17 CFR 240.17Ad–22(e)(2)(i), (iii), and (v).

2. Allocation of Credit Losses Exceeding Available Resources

Rule 17Ad–22(e)(4)(viii) requires, in relevant part, that OCC establish, implement, maintain, and enforce written policies and procedures reasonably designed to address allocation of credit losses OCC may face if its collateral and other resources are insufficient to fully cover its credit exposures.[36] OCC's proposal includes three new recovery tools addressing the allocation of credit losses in the event that OCC determined that, notwithstanding the availability of any remaining resources under the other resource rules, OCC may not have sufficient resources to satisfy its obligations and liabilities following a default. First, Rule 1009 would provide a framework for OCC to receive Voluntary Payments in addition to their required contribution to the Clearing Fund to address a shortfall. Second, Rule 1111 would provide a framework for Clearing Members and their customers to participate in a Voluntary Tear-Up. Third, Rule 1111 would provide the Board with the discretion to conduct a mandatory Partial Tear-Up. This tool could be used, if necessary in the event that OCC determines that its resources are inadequate to pay the applicable Partial Tear-Up Price, to allocate losses by allowing OCC to pay each relevant Clearing Member a pro rata amount of the applicable Partial Tear-Up Price based on the amount of such resources remaining. In addition, the modified powers of assessment would continue to allow OCC to use the Clearing Fund to address credit losses in the event of a member default.

Thus, the Commission believes that these additional recovery tools are reasonably designed to provide OCC with means to address allocation of credit losses that it may face if its collateral and other resources are insufficient to fully cover its credit exposures. Further, the Commission believes that these tools should address fully any credit losses that OCC may face as a result of any individual or combined default among its Clearing Members. Therefore, the Commission believes that these aspects of the proposed changes are consistent with Rule 17Ad–22(e)(4)(viii).[37]

3. Replenishment of Financial Resources Following a Default

Rule 17Ad–22(e)(4)(ix) requires, in relevant part, that OCC establish, implement, maintain, and enforce written policies and procedures reasonably designed to describe OCC's process to replenish any financial resources it may use following a default or other event in which use of resources is contemplated.[38]

The proposed changes to OCC's assessment powers would include the addition of a minimum fifteen-day cooling-off period that would be automatically triggered by a proportionate charge to the Clearing Fund arising from a Clearing Member default. At the end of the cooling-off period, a remaining Clearing Member (*i.e.,* a Clearing Member that did not choose to terminate its membership during the cooling-off period) would be obligated to replenish the Clearing Fund.

The Commission recognizes that by placing a cap on its assessment power during the cooling-off period, these revisions would effectively limit the amount of financial resources available to OCC from its Clearing Fund during that period. However, the Commission believes that these proposals would provide greater certainty and predictability regarding Clearing Members' maximum liability to the Clearing Fund. Moreover, in light of the proposed cap on OCC's assessment powers during the cooling-off period, OCC has authority under Rule 603 to call for additional initial margin from Clearing Members to ensure that OCC maintains sufficient financial resources to meet its requirements under Rule 17Ad–22(e)(4)(iii). Finally, at the end of a cooling-off period, a Clearing Member would be required to replenish the Clearing Fund in the amount necessary to meet its then-required contribution.

In light of the foregoing discussion, the Commission believes that the provisions related to OCC's assessment powers, taken together with the other components of OCC's default management procedures and recovery rules, which are reasonably designed to allow OCC to replenish its financial resources following a default or other event in which use of such resources is contemplated, are consistent with Rule 17Ad–22(e)(4)(ix).[39]

One commenter states that OCC should provide an explanation of its determination to set the cap on the powers of assessment at 200 percent during a cooling-off period.[40] In the OCC Letter, OCC provided an explanation of the internal analysis that it conducted to reach the 200 percent determination.[41] Specifically, OCC stated that it considered its ability to have sufficient financial resources inclusive of its proposed assessment powers to withstand extreme market conditions on a ''Cover-2'' basis under various scenarios, and that OCC determined that, under such scenarios, it would be able to meet its clearing obligations so long as it was able to use (1) the financial resources on hand in the Clearing Fund, and (2) the full funding of two assessments (*i.e.,* 200 percent) from non-defaulting Clearing Members.[42] Moreover, OCC stated that it reviewed the caps that other CCPs impose upon their own assessment powers and determined that the 200 percent cap is generally aligned with other assessment caps.[43] Based on review of the analysis provided by OCC and the caps of other CCPs,[44] the Commission believes that the 200 percent cap in the proposed changes is consistent with Rule 17Ad–22(e)(4)(ix).

4. Authority To Take Timely Action To Contain Losses and Liquidity Demands and Continue To Meet Obligations

Rule 17Ad–22(e)(13) requires, in relevant part, that OCC establish, implement, maintain, and enforce written policies and procedures reasonably designed to ensure that it has the authority and operational capacity to take timely action to contain losses and liquidity demands and continue to meet its obligations.[45] As described above, OCC's proposal would provide OCC with modified assessment powers and new tools of Voluntary Payments, Voluntary Tear-Ups, and Partial Tear-Ups.

As discussed above, the Commission recognizes that a tear-up would result in termination of positions of non-defaulting Clearing Members. However, because OCC would only be able to use its tear-up authority after it has conducted an auction pursuant to its Rules and when OCC has determined that it may not have sufficient financial resources to meet its obligations, a tear-up would only arise in an extreme stress scenario. Further, use of tear-up in such circumstances could potentially return

[36] 17 CFR 240.17Ad–22(e)(4)(viii).

[37] 17 CFR 240.17Ad–22(e)(4)(viii).

[38] 17 CFR 240.17Ad–22(e)(4)(ix).

[39] 17 CFR 240.17Ad–22(e)(4)(ix).

[40] *See* FIA Letter at 1–2.

[41] *See* OCC Letter at 2–3.

[42] *See id.*

[43] *See id.* at 3.

[44] *See, e.g.,* Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change to Amend the ICE Clear Credit Clearing Rules, as Modified by Amendment No. 1, Relating to Default Management, Clearing House Recovery and Wind-Down, Exchange Act Release No. 79750 (Jan. 6, 2017), 82 FR 3831 (Jan. 12, 2017) (SR–ICC–2016–013) (approving a proposed rule change including, among other things, a 300 percent cap on non-defaulting participants' liability during a cooling-off period).

[45] 17 CFR 240.17Ad–22(e)(13).

OCC to a matched book quickly, thereby containing its losses.

The Commission believes that these tools are designed to provide greater certainty to Clearing Members seeking to estimate the potential risks and losses arising from their use of OCC, while enabling OCC to promptly return to a matched book. The Commission believes that returning to a matched book pursuant to these provisions in the context of OCC's default management and recovery facilitates OCC's operational capacity to timely contain losses and liquidity demands while continuing to meet its obligations. Thus, the Commission believes that the proposed changes are consistent with Rule 17Ad–22(e)(13).[46]

5. Public Disclosure of Key Aspects of Default Rules

Rules 17Ad–22(e)(23)(i) and (ii) require, in relevant part, that OCC establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for the public disclosure of all relevant rules and material procedures, including key aspects of default rules and procedures, as well as sufficient information to enable participants to identify and evaluate the risks, fees and other material costs they incur by participating in OCC.[47] The Commission believes that the proposed changes address key aspects of OCC's default rules and procedures, thereby providing Clearing Members with a better understanding of the potential risks and costs they might face in an extreme event where OCC may use its proposed recovery tools, including the potential use of the Special Charge. Accordingly, the Commission believes that OCC has disclosed these key aspects of its default rules and procedures, consistent with Rule 17Ad–22(e)(23)(i) and (ii).[48]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the Amended Proposed Rule Change is consistent with the requirements of the Exchange Act, and in particular, with the requirements of Section 17A of the Exchange Act[49] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[50] that the Proposed Rule Change (SR–OCC–2017–020), as modified by Amendment No. 2, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[51]

Eduardo A. Aleman,

Assistant Secretary.

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[46] *Id.*

[47] 17 CFR 240.17Ad–22(e)(23)(i) and (ii).

[48] *Id.*

[49] In approving this Amended Proposed Rule Change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[50] 15 U.S.C. 78s(b)(2).

[51] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83919; File No. SR–CboeBZX–2018–044]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change Regarding BZX Rule 14.11(c) (Index Fund Shares)

August 23, 2018.

On June 21, 2018, Cboe BZX Exchange, Inc. (''BZX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to allow the quantitative requirements of BZX Rule 14.11(c)(3), (4), and (5) to be satisfied by either the underlying index or the fund's portfolio. The proposed rule change was published for comment in the **Federal Register** on July 11, 2018.[3] The Commission has received no comment letters 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 45th day after publication of the notice for this proposed rule change is August 25, 2018. 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 9, 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 Number SR–CboeBZX–2018–044).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Eduardo A. Aleman,

Assistant Secretary.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 83594 (July 5, 2018), 83 FR 32158.

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83927; File No. SR–OCC–2017–809]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of No Objection to Advance Notice, as Modified by Amendment No. 2, Concerning Enhanced and New Tools for Recovery Scenarios

August 23, 2018.

I. Introduction

On December 8, 2017, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') advance notice SR–OCC–2017–809 (''Advance Notice'') pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled Payment, Clearing and Settlement Supervision Act of 2010 (''Clearing Supervision Act'')[1] and Rule 19b–4(n)(1)(i)[2] under the Securities Exchange Act of 1934 (''Exchange Act'')[3] to propose changes to OCC's Rules and By-Laws to enhance OCC's existing tools to address the risks of liquidity shortfalls and credit losses and to establish new tools by which OCC could re-establish a matched book and, if necessary, allocate uncovered losses following a default as well as provide for additional financial resources. The Advance Notice was published for public comment in the **Federal Register**

[1] 12 U.S.C. 5465(e)(1).

[2] 17 CFR 240.19b–4(n)(1)(i).

[3] 15 U.S.C. 78a *et seq.*

on January 23, 2018.[4] On January 23, 2018, the Commission requested OCC provide it with additional information regarding the Advance Notice.[5] OCC responded to the request, and the Commission received the information on July 13, 2018.[6]

On July 11, 2018, OCC filed Amendment Nos. 1 and 2 to the Advance Notice to make certain changes to clarify the use of the recovery tools and to improve the overall transparency regarding the use of the recovery tools.[7] Notice of the Amendments to the Advance Notice was published for public comment in the **Federal Register** on August 7, 2018.[8] Comments received on the proposal contained in the Advance Notice are discussed below.[9]

This publication serves as notice that the Commission does not object to the changes set forth in the Advance Notice, as amended by Amendment No. 2 (''Amended Advance Notice'').

II. Background [10]

The Amended Advance Notice concerns proposed changes to OCC's Rules and By-Laws to enhance OCC's existing tools to address the risks of liquidity shortfalls and credit losses and to establish new tools by which OCC could re-establish a matched book and, if necessary, allocate uncovered losses following the default of a Clearing Member as well as provide for additional financial resources. Each of the proposed tools is contemplated to be deployed by OCC in an extreme stress event that has placed OCC into a recovery or orderly wind-down scenario. The proposed changes include modifying OCC's powers of assessment, introducing a framework for requesting voluntary payments to the Clearing Fund, and establishing OCC's authority to extinguish open positons (*i.e.,* conduct tear-ups) as well as authorizing OCC's Board to re-allocate losses from tear-ups.

A. Proposed Changes to OCC's Powers of Assessment

OCC maintains a Clearing Fund comprised of required contributions from Clearing Members, and OCC has authority to use the Clearing Fund, by a proportionate charge or otherwise, to cover certain losses suffered by OCC.[11] When an amount is paid out of a Clearing Member's required contribution to the Clearing Fund, the Clearing Member is generally required to promptly make good any deficiency in its required contribution to the Clearing Fund from such payment.[12] Generally, this requirement to promptly make good on any deficiency arising from the default of a Clearing Member has been referred to as an ''assessment'' by OCC against a Clearing Member; however, as further described below, OCC is making clarifying changes to a Clearing Member's obligation to contribute to the Clearing Fund, including defining and delineating between a Clearing Member's obligation to answer ''assessments'' charged by OCC under certain circumstances described further below and a Clearing Member's obligations where OCC seeks to effect a ''replenishment'' of the Clearing Fund.

Currently, a Clearing Member's obligation to make good its required contribution to the Clearing Fund is not subject to any pre-determined limit. However, a Clearing Member may limit the amount of its liability to contribute to the Clearing Fund by winding-down its clearing activities and terminating its membership. To do so, a Clearing Member must provide written notice to OCC that it is terminating its membership by no later than the fifth business day after application of the proportionate charge.[13] This termination would limit the Clearing Member's obligation to meet a future assessment to an additional 100 percent of the amount of its then-required Clearing Fund contribution. Thus, terminating clearing membership is the only means by which a Clearing Member can currently limit its liability for amounts due to the Clearing Fund. OCC proposed three changes to modify its existing authority to assess proportionate charges against Clearing Members' required contributions to the Clearing Fund: (1) A cooling-off period and cap on assessments; (2) termination of clearing membership during a cooling-off period; and (3) replenishment of resources following a cooling-off period.

1. Cooling-Off Period and Cap on Assessments

The proposal would introduce a minimum fifteen calendar day ''cooling-off'' period that automatically begins when OCC imposes a proportionate charge related to the default of a Clearing Member against non-defaulting Clearing Members' Clearing Fund contributions. During a cooling-off period, the aggregate liability for a Clearing Member would be capped at 200 percent of its then-required contribution to the Clearing Fund. The cooling-off period would be extended if one or more specific events related to the default of a Clearing Member (as set forth in OCC's By-laws) [14] occur(s)

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[4] Exchange Act Release No. 82513 (Jan. 17, 2018), 83 FR 3244 (Jan. 23, 2018) (SR–2017–809) (''Notice of Filing''). On December 18, 2017, OCC also filed a related proposed rule change (SR–OCC–2017–020) with the Commission pursuant to Section 19(b)(1) of the Exchange Act and Rule 19b–4 thereunder, seeking approval of changes to its rules necessary to implement the Advance Notice (''Proposed Rule Change''). 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4, respectively. The Proposed Rule Change was published in the **Federal Register** on December 26, 2017. Exchange Act Release No. 82531 (Dec. 19, 2017), 82 FR 61107 (Dec. 26, 2017).

[5] *See* Memorandum from Office of Clearance and Settlement, Division of Trading and Markets, dated January 23, 2018, available at *https://www.sec.gov/comments/sr-occ-2017-809/occ2017809-2948229-161855.pdf.*

[6] *See* Memorandum from Office of Clearance and Settlement, Division of Trading and Markets, dated July 17, 2018, available at *https://www.sec.gov/comments/sr-occ-2017-809/occ2017809-04062512-169148.pdf.*

[7] Amendment No. 2 was filed to supersede and replace Amendment No. 1 in its entirety due to technical defects in Amendment No. 1.

[8] *See* Exchange Act Release No. 83761 (Aug. 1, 2018), 83 FR 38738 (Aug. 7, 2018) (''Notice of Amendment'').

[9] The letters are available at: *https://www.sec.gov/comments/sr-occ-2017-022/occ2017020.htm.*

Since the proposal contained in the Advance Notice was also filed as a proposed rule change, all comments received on the proposal are considered regardless of whether the comments are submitted on the proposed rule change or the Advance Notice.

[10] Capitalized terms used but not defined herein have the meanings specified in OCC's Rules and By-Laws, *available at https://www.theocc.com/about/publications/bylaws.jsp.*

[11] *See* OCC By-Laws, Article VIII. For example, under Section 5 of Article VIII of the OCC By-Laws, when a Clearing Member defaults, OCC will pay for the resulting losses or expenses by first applying other funds available to OCC in the accounts of the defaulting Clearing Member and then applying the defaulting Clearing Member's required contribution to the Clearing Fund. If the losses and expenses exceed those amounts, then OCC will charge the amount of the remaining deficiency on a proportionate basis against all non-defaulting Clearing Members' required contributions to the Clearing Fund.

[12] *See* OCC By-Laws, Article VIII, Section 6.

[13] In addition to providing the written notice, to effectively terminate membership, a Clearing Member must satisfy two other conditions. First, after submitting the written notice, the Clearing Member cannot submit for clearance any opening purchase transaction or opening written transaction or initiate a Stock Loan through any of the Clearing Member's accounts. Second, the Clearing Member has to close out or transfer all of its open positions with OCC, in each case as promptly as practicable after giving written notice. *See* OCC By-Laws, Article VIII, Section 6.

[14] Specifically, a cooling-off period would automatically begin after a proportionate charge arises in response to: (i) Any Clearing Member failure to discharge duly any obligation on or arising from any confirmed trade accepted by OCC, (ii) any Clearing Member (including any Appointed Clearing Member) failure to perform any obligations (including its obligations to the correspondent clearing corporation) under or arising from any exercised or assigned option contract or any other contract or obligation issued or guaranteed by OCC or in respect of which it is otherwise liable, (iii) any Clearing Member failure to perform any obligation to OCC in respect of the stock loan and borrow positions of such Clearing Member, or (iv) OCC suffered any loss or expense upon any liquidation of a Clearing Member's open positions. *See* OCC By-Laws, Article VIII, Section 5(a)(i)–(iv).

during that fifteen calendar day period and results in one or more proportionate charges against the Clearing Fund. Such an extension would run until the earlier of (i) the fifteenth calendar day from the date of the most recent proportionate charge resulting from that subsequent event, or (ii) the twentieth day from the date of the proportionate charge that initiated the cooling-off period.

Once the cooling-off period ends, each remaining Clearing Member would be required to replenish the Clearing Fund in the amount necessary to meet its then-required contribution. Any remaining losses or expenses suffered by OCC as a result of any events that occurred during that cooling-off period could not be charged against the amounts Clearing Members have contributed to replenish the Clearing Fund upon the expiration of the cooling-off period. However, after the end of a cooling-off period, the occurrence of another specified event that results in a proportionate charge against the Clearing Fund would trigger a new cooling-off period.

2. Membership Termination During a Cooling-Off Period

As noted above, to limit its liability to replenish the Clearing Fund, a Clearing Member currently must provide written notice of its intent to terminate its clearing membership by no later than the fifth business day after a proportionate charge. OCC's proposal would extend the time frame for a Clearing Member to provide such notice of termination, which would allow the terminating Clearing Member to avoid liability to replenish the Clearing Fund after the cooling-off period. Specifically, to terminate its status as a Clearing Member and not be liable for replenishment at the end of a cooling-off period, a Clearing Member would be required to: (i) Notify OCC in writing of its intent to terminate by no later than the last day of the cooling-off period, (ii) not initiate any opening purchase or opening writing transaction, and, if the Clearing Member is a Market Loan Clearing Member or a Hedge Clearing Member, not initiate any Stock Loan transaction through any of its accounts, and (iii) close-out or transfer all open positions by no later than the last day of the cooling-off period. If a Clearing Member fails to satisfy all of these conditions by the end of a cooling-off period, it would not have completed all of the requirements necessary to terminate its status as a Clearing Member, and therefore, it would remain subject to its obligation to replenish the Clearing Fund after the cooling-off period ends.

Given the products cleared by OCC and the composition of its clearing membership, OCC determined that a minimum 15-calendar day cooling-off period, rolling up to a maximum of 20 calendar days, is likely to be a sufficient amount of time for OCC to manage the ongoing default(s) and take necessary steps in furtherance of stabilizing the clearing system. Further, based on its conversations with Clearing Members, OCC believes that the proposed cooling-off period is likely to be a sufficient amount of time for Clearing Members (and their customers) to orderly reduce or rebalance their positions, in an attempt to mitigate stress losses and exposure to potential initial margin increases during the stress event.[15] OCC also believes the proposed cooling-off period, coupled with the other proposed changes to OCC's assessment powers, is likely to provide Clearing Members with an adequate measure of stability and predictability as to the potential use of Clearing Fund resources, which would, according to OCC, remove the existing incentive for Clearing Members to withdraw following a proportionate charge (*i.e.,* to avoid facing potentially unlimited liability for replenishing the Clearing Fund).

3. Replenishment and Assessment

The proposal would clarify the distinction between ''replenishment'' of the Clearing Fund and a Clearing Member's obligation to answer ''assessments'' charged by OCC. In this context, the term ''replenish'' (and its variations) would refer to a Clearing Member's standing duty, following any proportionate charge against the Clearing Fund, to return its Clearing Fund contribution to the amount required from such Clearing Member for the month in question. The term ''assessment'' (and its variations) would refer to the amount, during any cooling-off period, that a Clearing Member would be required to contribute to the Clearing Fund in excess of the amount of the Clearing Member's pre-funded required Clearing Fund contribution.

B. Proposed Authority To Request Voluntary Payments

OCC proposed new Rule 1011 to provide a framework for receipt of voluntary payments in a circumstance where a Clearing Member has defaulted and OCC has determined that it may not have sufficient resources to satisfy its obligations and liabilities resulting from such default.[16] OCC would initiate a call for voluntary payments by issuing a notice inviting all non-defaulting Clearing Members to make payments to the Clearing Fund in addition to any amounts they are otherwise required to contribute pursuant to Rule 1001 (''Voluntary Payment Notice''). The Voluntary Payment Notice would specify the terms applicable to any voluntary payment, including but not limited to, that any voluntary payment may not be withdrawn once made, that no Clearing Member shall be obligated to make a voluntary payment, and that OCC shall retain full discretion to accept or reject any voluntary payment.

In the event that OCC eventually obtains additional financial resources from the defaulting Clearing Member, OCC would give priority to repayment of Clearing Members that made Voluntary Payments. Specifically, if OCC subsequently recovers from the defaulted Clearing Member or the estate of the defaulted Clearing Member, OCC would seek to first compensate all non-defaulting Clearing Members that made voluntary payments.[17] If the amount recovered from the defaulted Clearing Member were less than the aggregate amount of voluntary payments, non-defaulting Clearing Members that made voluntary payments each would receive a percentage of the amount recovered that corresponds to that Clearing Member's percentage of the total amount of voluntary payments received.

C. Proposed Authority To Conduct Voluntary Tear-Ups and Partial Tear-Ups

OCC proposed new Rule 1111 to establish a framework to extinguish positions of a suspended or defaulted Clearing Member on a voluntary basis (''Voluntary Tear-Up'') or on a mandatory basis (''Partial-Tear Up'') and, in certain extreme circumstances, to allocate any uncovered losses in the event that OCC does not have sufficient financial resources to conduct the tear-

[15] *See* Notice of Amendment, 83 FR at 38746.

[16] OCC's determination would be made notwithstanding availability of remaining resources under Rules 707 (addressing the treatment of funds in a Clearing Member's X–M accounts); 1001 (addressing the size of OCC's Clearing Fund and the amount of a Clearing Member's contribution); 1104–1107 (concerning the treatment of the portfolio of a defaulted Clearing Member); and 2210 and 2211 (concerning the treatment of Stock Loan positions of a defaulted Clearing Member).

[17] As discussed further in Section II.C.1 below, OCC's proposed authority with respect to Voluntary Payments and Voluntary Payments would work together to establish a hierarchy of repayment in the event that OCC subsequently recovers from the defaulted Clearing Member. Under proposed rules 1011(b) and 1111(a)(ii), OCC would first seek to compensate those non-defaulting Clearing Members who had submitted Voluntary Payments and, thereafter, to the extent funds remained, OCC would then seek to compensation those non-defaulting Clearing Members who had participated in the Voluntary Tear-Up.

up. A Voluntary Tear-Up, if provided, would precede a Partial-Tear Up, and any Partial Tear-Up would take into account any positions extinguished as part of a Voluntary Tear-Up. Further, Rule 1111(h) would provide that no action or omission by OCC pursuant to, and in accordance with, Rule 1111 shall constitute a default by OCC, provided that Rule 1111(h) would not apply in the event that OCC pays Clearing Members a pro rata amount of the applicable Tear-Up price because OCC does not have adequate resources to pay the full Tear-Up price.

OCC's use of both Voluntary and Partial Tear-Up would be subject to certain prerequisites. First, any tear-up would occur after one or more failed auctions pursuant to Rule 1104 or 1106. Second, any tear-up would occur after OCC has determined that it may not have sufficient resources to satisfy its obligations and liabilities resulting from such default.[18]

OCC represented that it would initiate its tear-up process on a date sufficiently in advance of the exhaustion of its financial resources such that OCC would expect to have adequate remaining resources to cover the amount it must pay to extinguish the positions of Clearing Members and customers.[19] The holders of torn-up positions would be assigned a price, and OCC would draw on its remaining financial resources to extinguish the torn-up positions at the assigned price. Although OCC does not intend, in the first instance, for its tear-up process to serve as a means of loss allocation, OCC recognizes that circumstances may arise such that, despite its best efforts, OCC may not have adequate remaining financial resources to extinguish torn-up positions at the full assigned price, resulting in the allocation of uncovered losses by the tear-up process. As further described below, a Clearing Member allocated an uncovered loss would then have an unsecured claim against OCC for the value of the difference between the pro rata amount paid to the Clearing Member and the full amount the Clearing Member should have received.

1. Voluntary Tear-Up

As noted above, a Voluntary Tear-Up would provide an opportunity to holders of certain positions opposite a defaulting Clearing Member to voluntarily extinguish those positions. Although the Risk Committee of OCC's Board of Directors (''Risk Committee'') approval is not necessary to commence a Voluntary Tear-Up, the Risk Committee would be responsible for determining the scope of a Voluntary Tear-Up. Proposed Rule 1111(c) would provide discretion to the Risk Committee when determining the appropriate scope, but the discretion would be subject to, and limited by, certain conditions, *i.e.,* that the determination should be: (i) Based on then-existing facts and circumstances; (ii) be in furtherance of the integrity of OCC and the stability of the financial system; and (iii) take into consideration the legitimate interests of Clearing Members and market participants.

Once the Risk Committee has determined the scope, OCC would initiate the call for Voluntary Tear-Ups by issuing a notice (''Voluntary Tear-Up Notice'') to inform all non-defaulting Clearing Members of the opportunity to participate in a Voluntary Tear-Up.[20] The Voluntary Tear-Up Notice would specify the terms applicable to any Voluntary Tear-Up, including, but not limited to, that no Clearing Member or customers of a Clearing Member shall be obligated to participate in a Voluntary Tear-Up, and that OCC shall retain full discretion to accept or reject any Voluntary Tear-Up.

Clearing Members and their customers that participated in a Voluntary Tear-Up and incurred losses would have a claim to amounts subsequently recovered from a defaulted Clearing Member (or the estate of the defaulted Clearing Member). The claim would be junior to Clearing Members who made a voluntary payment to the Clearing Fund, and OCC would satisfy the claims on a pro-rata basis.

2. Partial Tear-Up

Under proposed Rule 1111(b), OCC's Board would be responsible for the decision to conduct a mandatory Partial Tear-Up. The Risk Committee would then be responsible for determining the appropriate scope of the Partial Tear-Up, subject to the conditions in Rule 1111(c) discussed above.

The proposed rule would also provide the Board with the discretion to conduct a mandatory Partial Tear-Up to extinguish the remaining open positions of any defaulted Clearing Member or customer of such defaulted Clearing Member(s) (''Remaining Open Positions'') and/or any related open positions necessary to mitigate further disruptions to the markets affected by the Remaining Open Positions (''Related Open Positions''). The open positions subject to tear-up opposite to the Remaining Open Positions and the Related Open Positions would be designated in accordance with the methodology in Rule 1111(e). Specifically, for Remaining Open Positions, the aggregate amount in the identical Cleared Contracts and Cleared Securities would be designated on a pro-rata basis to non-defaulting Clearing Members that have an open position in such Cleared Contract or Cleared Security. For Remaining Open Positions, all open positions in Cleared Contracts and Cleared Securities identified in the scope of the Partial Tear-Up would be extinguished.

After the scope of the Partial Tear-Up is determined, OCC would initiate the Partial Tear-Up process by issuing a notice (''Partial Tear-Up Notice''). The Partial Tear-Up Notice would: (i) Identify the Remaining Open Positions and Related Open Positions designated for tear-up; (ii) identify the Tear-Up Positions; (iii) specify the termination price (''Partial Tear-Up Price'') for each position to be torn-up; and (iv) list the date and time, as determined by the Risk Committee, that the Partial Tear-Up will occur (''Partial Tear-Up Time'').

Rule 1111(f) would provide that, to determine the Partial Tear-Up Price, OCC would use its discretion, acting in good faith and in a commercially reasonable manner, to adopt methods of valuation expected to produce reasonably accurate substitutes for the values that would have been obtained from the relevant market if it were operating normally, including but not limited to the use of pricing models that use the market price of the underlying interest or the market prices of its components. Rule 1111(f) further specifies that OCC may consider the same information set forth in subpart (c) of Section 27, Article VI of OCC's By-Laws.[21] OCC stated that it is likely to

[18] As with Voluntary Payments, this determination would be made notwithstanding availability of remaining resources under Rules 707, 1001, 1104–1107, 2210, and 2211. *See* note 16 *supra.*

[19] Specifically, OCC stated that it anticipated that it would determine the date on which to initiate Partial Tear-Ups by monitoring its remaining financial resources against the potential exposure of the remaining unauctioned positions from the portfolio(s) of the defaulted Clearing Member(s).

[20] Because OCC does not know the identities of Clearing Members' customers, OCC would depend on each Clearing Member to notify its customers with positions in scope of the Voluntary Tear-Up of the opportunity to participate in such tear-up.

[21] Section 27, Article VI addresses the valuation of positions that may be subject to close-out netting in the event of OCC's insolvency or default. Specifically, it states that in determining a close-out amount, OCC may consider any information that it deems relevant, including, but not limited to, any of the following factors: (i) Prices for underlying interests in recent transactions, as reported by the market or markets for such interests; (ii) quotations from leading dealers in the underlying interest, setting forth the price (which may be a dealing price or an indicative price) that the quoting dealer would charge or pay for a specified quantity of the underlying interest; (iii) relevant historical and

use the last established end-of-day settlement price, in accordance with its existing practices concerning pricing and valuation. However, given that it is not possible to know in advance the precise circumstances that would cause OCC to conduct a tear-up, Rule 1111(f) would allow OCC to exercise discretion, if necessary, in establishing the Partial Tear-Up Price by some means other than its existing practices concerning pricing and valuation. For example, OCC represented that it has observed certain rare circumstances in which a closing price for an underlying security of an option may be stale or unavailable. A stale or unavailable closing price could be the result of a halt on trading in the underlying security, a corporate action resulting in a cash-out or conversion of the underlying security (but that has not yet been finalized), or the result of an ADR whose underlying security is being impacted by certain provisions under foreign laws. OCC stated it would consider these circumstances in determining whether use of the discretion that would be afforded under proposed Rule 1111(f) might be warranted.[22]

Every Partial Tear-Up position would be automatically terminated at the Partial Tear-Up Time, without the need for any further step by any party to the position. Upon termination, either OCC or the relevant Clearing Member would be obligated to pay to the other party the applicable Partial Tear-Up Price. The corresponding open position would be deemed terminated at the Partial Tear-Up Price. In the event that, given the amount of remaining resources, OCC would not be able to pay the full Partial Tear-Up Price, OCC would pay each torn-up Clearing Member a pro-rata amount of the applicable Partial Tear-Up Price based on the amounts of such resources remaining. Those Clearing Members would then have an unsecured claim against OCC for the value of the difference between the pro rata amount and the Partial Tear-Up Price.

3. Re-Allocating Losses From Tear-Up

The proposed changes would provide OCC with means to re-allocate losses, costs, and expenses associated with the tear-up process. First, the proposal would amend Article VIII of the By-Laws to provide OCC discretion to use remaining Clearing Fund contributions to re-allocate losses imposed on non-defaulting Clearing Members and customers from a tear-up. Second, in connection with a Partial Tear-Up, proposed Rule 1111(g) would provide the Board with discretion to re-allocate losses, costs, and fees imposed upon non-defaulting Clearing Members and their customers among all non-defaulting Clearing Members to the extent that such losses, costs, and fees can be reasonably determined by OCC (''Special Charge''). The Special Charge would correspond to each non-defaulting Clearing Member's proportionate share of the variable amount of the Clearing Fund at the time of the Partial Tear-Up. The Special Charge would be distinct and separate from a Clearing Member's obligation to satisfy Clearing Fund assessments during a cooling-off period and, therefore, not subject to the cap on assessments.

III. Discussion and Commission Findings

Although the Clearing Supervision Act does not specify a standard of review for an advance notice, the stated purpose of the Clearing Supervision Act is instructive: To mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for systemically important financial market utilities (''SIFMUs'') and strengthening the liquidity of SIFMUs.[23]

Section 805(a)(2) of the Clearing Supervision Act [24] authorizes the Commission to prescribe regulations containing risk-management standards for the payment, clearing, and settlement activities of designated clearing entities engaged in designated activities for which the Commission is the supervisory agency. Section 805(b) of the Clearing Supervision Act [25] provides the following objectives and principles for the Commission's risk-management standards prescribed under Section 805(a):

- To promote robust risk management;
- to promote safety and soundness;
- to reduce systemic risks; and
- to support the stability of the broader financial system.

Section 805(c) provides, in addition, that the Commission's risk-management standards may address such areas as risk-management and default policies and procedures, among others areas.[26]

The Commission has adopted risk-management standards under Section 805(a)(2) of the Clearing Supervision Act and Section 17A of the Exchange Act (the ''Clearing Agency Rules'').[27] The Clearing Agency Rules require, among other things, each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for its operations and risk-management practices on an ongoing basis.[28] As such, it is appropriate for the Commission to review advance notices against the objectives and principles of these risk management standards as described in Section 805(b) of the Clearing Supervision Act and the Clearing Agency Rules. As discussed below, the Commission believes the proposal in the Amended Advance Notice is consistent with the objectives and principles described in Section 805(b) of the Clearing Supervision Act,[29] and in the Clearing Agency Rules, in particular Rules 17Ad–22(e)(2)(i), (iii), and (v), (e)(4)(viii) and (ix), (e)(13), and (e)(23)(i) and (ii).[30]

A. Consistency With Section 805(b) of the Clearing Supervision Act

The Commission believes that the proposal contained in OCC's Amended Advance Notice is consistent with the stated objectives and principles of Section 805(b) of the Clearing Supervision Act. Specifically, as discussed below, the Commission believes that the changes proposed in the Amended Advance Notice are consistent with promoting robust risk management in the area of credit risk, promoting safety and soundness, reducing system risks, and supporting the stability of the broader financial system.[31]

First, the proposed rule changes would provide OCC with additional tools to address risks it may confront in an extreme stress event that places OCC in a recovery scenario. The Commission

current market data for the relevant market, provided by reputable outside sources or generated internally; and (iv) values derived from theoretical pricing models using available prices for the underlying interest or a related interest and other relevant data.

[22] *See* Letter from Joseph P. Kamnik, Sr. Vice President and CRO, OCC, to Brent Fields, Secretary, Commission, at 5 (Jul. 9, 2018) (''OCC Letter'').

[23] *See* 12 U.S.C. 5461(b).

[24] 12 U.S.C. 5464(a)(2).

[25] 12 U.S.C. 5464(b).

[26] 12 U.S.C. 5464(c).

[27] 17 CFR 240.17Ad–22. *See* Securities Exchange Act Release No. 68080 (October 22, 2012), 77 FR 66220 (November 2, 2012) (S7–08–11). *See also* Securities Exchange Act Release No. 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (S7–03–14) (''Covered Clearing Agency Standards''). The Commission established an effective date of December 12, 2016, and a compliance date of April 11, 2017, for the Covered Clearing Agency Standards. OCC is a ''covered clearing agency'' as defined in Rule 17Ad–22(a)(5).

[28] 17 CFR 240.17Ad–22.

[29] 12 U.S.C. 5464(b).

[30] 17 CFR 240.17Ad–22(e)(2)(i), (iii), and (v), (e)(4)(viii) and (ix), (e)(13), and (e)(23)(i) and (ii).

[31] 12 U.S.C. 5464(b).

believes that the new and amended authority granted to OCC and described in the Amended Advance Notice should provide OCC with the ability to re-establish a matched book, allocate uncovered losses if necessary, and limit OCC's potential exposure to losses from an extreme loss event, all of which would be essential to OCC's ability to continue to provide its critical clearing services in the event that an extreme market event places OCC in a recovery scenario. In general, OCC maintains equal and opposite obligations on cleared positions. In an extreme loss event caused by a Clearing Member default, re-establishing this matched book as quickly as possible is essential because it would allow OCC to close out the defaulting Clearing Member's portfolio, define the potential scope of losses, and avoid additional losses to non-defaulting Clearing Members or OCC. In addition, allocating uncovered losses is important in an extreme loss event because it would allow OCC to provide further certainty to Clearing Members, their customers, and other stakeholders about how it addresses such losses and avoid a disorderly resolution to such an event. Thus, taken together, the Commission believes that, by providing OCC with these new and amended tools specific to the context of extreme loss events that may heighten the need for recovery, the proposed changes should improve OCC's ability to recover in the event that an extreme market event places OCC in a recovery scenario, and therefore are reasonably designed to enhance OCC's ability to address an extreme loss event and continue to operate in a safe and sound manner during such an event.

In addition, the Commission believes that the proposed changes would provide a reasonable amount of clarity and specificity to Clearing Members, their customers, and other stakeholders about the potential tools that would be expected to be available to OCC if such an event occurred, and the consequences that might arise from OCC's application of such tools. Because of this increased clarity and specificity, OCC's Clearing Members, their customers, and other stakeholders should have more information regarding their potential exposure and liability to OCC in an extreme loss event. Accordingly, the Commission believes that the proposed changes should allow Clearing Members, their customers, and other stakeholders to better evaluate the risks and benefits of clearing transactions at OCC because the proposed changes result in those parties having more information and specificity regarding the actions that OCC could take in response to an extreme loss event. Further, to the extent that Clearing Members, their customers, and other stakeholders are able to use this increased clarity and specificity to better manage their potential exposure and liability in clearing transactions at OCC, such parties should be able to mitigate the likelihood that such tools could surprise or otherwise destabilize them and, by extension, the broader financial system. For these reasons, the Commission believes that the proposed changes are consistent with promoting robust risk management, promoting safety and soundness, and supporting the stability of the broader financial system.

Second, the Commission believes that the proposed changes are consistent with reducing systemic risks and supporting the stability of the broader financial system. OCC is the sole registered clearing agency for the U.S. listed options markets and a SIFMU. It is therefore important for OCC to implement measures that enhance its ability to address losses and avoid threatening the stability of the U.S. listed options markets and the broader financial system, including measures reflected in the proposed changes that are designed to facilitate OCC's ability to address risks and obligations arising in the specific context of extreme loss events that may heighten the need for recovery. Therefore, and for the reasons discussed above with respect to OCC's ability to re-establish a matched book, allocate uncovered losses if necessary, and limit OCC's potential exposure to losses from an extreme loss event, the Commission believes that, as a result of the new and amended authority granted to OCC to implement such measures, the proposed changes are reasonably designed to facilitate OCC's ability to fully allocate, and ultimately extinguish, any losses arising from an extreme market event, thereby enhancing OCC's ability to continue to provide its critical clearing services. Relatedly, the Commission also believes that the proposed changes should reduce the potential risk that OCC's handling of an extreme loss event results in additional financial stress or instability passing on to Clearing Members, their customers, other stakeholders and the broader financial system generally during such events. As such, the Commission believes the proposed change is consistent with reducing systemic risks and supporting the stability of the broader financial system.

Third, OCC's proposed modified assessment powers would impose a cap on a Clearing Member's potential liability to replenish the Clearing Fund following a particular default event and extend the timeframe during which a Clearing Member must determine whether to terminate its membership and avoid further losses. In addition, the new authority to seek Voluntary Payments would provide an additional tool by which OCC may increase its financial resources. Taken together, the Commission believes that these tools are reasonably designed to provide OCC with sufficient financial resources to cover default losses and ensure that OCC can take timely actions to contain losses and continue meeting its obligations in the event of a Clearing Member default. Similarly, the Commission believes that these changes would provide Clearing Members and their customers with greater certainty and predictability regarding the amount of losses they must bear as a result of a Clearing Member default. For these reasons, the Commission believes that these tools should enhance OCC's ability to address the issues arising from a Clearing Member default, thereby promoting robust risk management and safety and soundness.

Fourth, OCC's proposed authority to conduct tear-ups would provide OCC with a mechanism for restoring a matched book and, in the event that OCC did not have sufficient financial resources to pay the full Partial Tear-Up Price, allocate losses to the non-defaulting Clearing Members. The Commission recognizes that a tear-up would result in termination of positions of non-defaulting Clearing Members. However, because under the proposed rules OCC would only be able to use its tear-up authority after it has conducted an auction pursuant to its Rules and when OCC has determined that it may not have sufficient financial resources to meet its obligations, a tear-up would only arise in an extreme stress scenario. Use of tear-up in such circumstances could potentially return OCC to a matched book quickly, thereby containing its losses and avoiding OCC's and its Clearing Members' exposure to additional losses, as discussed further above. OCC's proposal would also address the determination of the Partial Tear-Up Price. Specifically, OCC would determine a Partial Tear-Up Price by using its discretion, acting in good faith and a commercially reasonable manner, to adopt methods of valuation expected to produce reasonably accurate substitutes for the values that would have been obtained from the relevant market if it were operating normally, including but not limited to the use of pricing models that use the market price

of the underlying interest or the market prices of its components. The Commission believes that OCC's proposed authority to conduct tear-ups, and therefore its ability to return to a matched book quickly and, in an extreme event, allocate losses, could facilitate the timely containment of default losses and liquidity pressures, thereby helping to prevent OCC from failing in such an event, and is therefore consistent with promoting robust risk management and safety and soundness. Further, the Commission believes that, to the extent that OCC's ability to conduct tear-ups could limit contagion to the broader financial system, this ability is also consistent with supporting the stability of the broader financial system.

One commenter states that the Partial Tear-Up Price should be determined objectively and not on a discretionary basis.[32] In the OCC Letter, OCC states that, in the event that it has to determine a Partial Tear-Up Price, OCC anticipates that it is likely to use the last established end-of-day settlement price, in accordance with its existing practices concerning pricing and valuation, but notes that discretion may be necessary in the circumstances likely to be associated with an extreme loss event necessitating a tear-up where the end-of-day closing price may be stale or unavailable.[33] Further, the Commission notes that, under OCC's proposed rule, OCC would not have unfettered discretion to determine the appropriate price. Rather, OCC's discretion would be limited by two conditions. Specifically, in the event that OCC uses its discretion to determine a Partial Tear-Up Price, it will be required under OCC's proposed rule to do so (i) in good faith and (ii) in a commercially reasonable manner.[34] The Commission believes that this discretion, as limited by the two specified conditions, is appropriate given that it is not possible to know the precise circumstances likely to be associated with an extreme loss event necessitating a tear-up, and, therefore, the limited discretion provided for in the proposed rule may be appropriate in such circumstances. The Commission also notes that, in the event that OCC is using its authority to conduct a Partial Tear-Up, OCC would provide notification to the Commission and other regulators.[35] Accordingly, the Commission does not believe that this aspect of the proposal is inconsistent with the Clearing Supervision Act.

Finally, OCC's proposal would also introduce methods of re-allocating losses after a tear-up. First, the revised By-Laws would allow OCC discretion to use remaining Clearing Fund contributions to re-allocate losses imposed on non-defaulting Clearing Members and their customers from a tear-up. Second, the revised Rules would provide the Board with the discretion to re-allocate losses among all non-defaulting members via a Special Charge, to the extent that such losses can be reasonably determined. As such, the Commission believes that these tools, and the associated governance, are reasonably designed to give OCC the ability to re-allocate the losses in a fair and equitable manner after an extreme market event, thereby promoting safety and soundness and supporting the stability of the broader financial system.

One commenter states that the power to impose the Special Charge in connection with a Partial Tear-Up potentially could impose costs onto non-defaulting Clearing Members that did not have an opposing position from a defaulting Clearing Member. According to the commenter, the Special Charge could, in effect, be another assessment against all Clearing Members, which could create unquantifiable and unmanageable risks to Clearing Members. Moreover, the commenter states that the discretion afforded the Board may result in the Special Charge being capriciously applied. For these reasons, the commenter believes that the costs associated with a Partial Tear-Up should not be transferrable to unaffected Clearing Members.[36]

Under the terms of the proposed rule, the Special Charge could only be used when the losses, costs, and fees imposed upon non-defaulting Clearing Members and their customers directly resulting from a Partial Tear-Up reasonably can be determined by OCC. Further, if it were used, the Special Charge would correspond to each non-defaulting Clearing Member's proportionate share of the Clearing Fund at the time of the Partial Tear-Up. Thus, the Commission does not believe that OCC would be permitted under the proposed rule to engage in unlimited assessments because the amount of the Special Charge must be subject to a reasonable determination, and the Special Charge would then correspond to the non-defaulting Clearing Member's proportionate share of the Clearing Fund. These aspects of the Special Charge should help ensure that OCC does not apply the tool capriciously and that the Board would use the Special Charge in these delineated circumstances, *i.e.,* when the amount of the losses was reasonably determinable. For these reasons, the Commission does not believe that the Special Charge is inconsistent with the Clearing Supervision Act.

Accordingly, and for the reasons stated, the Commission believes the changes proposed in the Amended Advance Notice are consistent with Section 805(b) of the Clearing Supervision Act.[37]

B. Consistency With Rule 17Ad0–22(e)(2)(i), (iii), and (v), Rule 17Ad–22(e)(4)(viii) and (ix), Rule 17Ad–22(e)(13), and Rule 17Ad–22(e)(23)(i) and (ii) Under the Exchange Act

1. Governance

Rule 17Ad–22(e)(2) requires, in relevant part, that OCC establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent; support the public interest requirements of Section 17A of the Exchange Act applicable to clearing agencies, and the objectives of owners and participants; and specify clear and direct lines of responsibility.[38]

The proposal, taken together with existing OCC Rules, specifies the governance that would apply to use of each of the recovery tools. Specifically, with respect to the modified powers of assessment, the cooling-off period would commence automatically upon a number of events specified in the By-Laws. The use of Voluntary Payments and either Voluntary or Partial Tear-Up cannot occur unless OCC has determined that it may not have sufficient resources available to satisfy its obligations after a default. In addition, the proposal specifies the applicable decision-making body that would be responsible for determining whether to conduct a tear-up. Specifically, for a Voluntary Tear-Up, OCC would be able to make that determination, and for a Partial Tear-

[32] *See* Letter from Jacqueline H. Mesa, Sr. Vice President of Global Policy, Futures Industry Association, to Brent Fields, Secretary, Commission, at 2 available at *https://www.sec.gov/comments/sr-occ-2017-022/occ2017020.htm* (Jan. 16, 2018) (''FIA Letter'').

[33] *See* OCC Letter at 5. According to OCC, a stale or unavailable closing price could be the result of a halt on trading in the underlying security, a corporate action resulting in a cash-out or conversion of the underlying security (but that has not yet been finalized), or the result of an ADR whose underlying security is being impacted by certain provisions under foreign laws. *See id.*

[34] *See also id.* at 5.

[35] *See* Securities Exchange Act Release No. 83928 (Aug. 23, 2018 at note 19).

[36] *See* FIA Letter at 2.

[37] 12 U.S.C. 5464(b).

[38] 17 CFR 240.17Ad–22(e)(2)(i), (iii), and (v).

Up, which is mandatory, Board action is required. The Risk Committee would be responsible for determining the scope of the tear-ups, and any such determinations must take into account certain considerations. Only the Board may elect to impose a Special Charge to reallocate losses, costs, and fees from a Partial Tear-Up.

Thus, key decisions by OCC in connection with the use of its proposed recovery tools are subject to specific governance processes. These requirements include the involvement of the Risk Committee in determining the scope and pricing for any Partial Tear-up and specifically require Board approval with respect to instituting Partial Tear-Up and authorizing the Special Charge. Accordingly, the Commission believes that the governance process for using the recovery tools is clear and transparent and provides clear and direct lines of responsibility by addressing decision making in the use of recovery tools, thereby supporting the public interest requirements of Section 17A of the Exchange Act applicable to clearing agencies, and the objectives of owners and participants, and therefore the Commission believes that the proposed rule change is consistent with Rule 17Ad–22(e)(2)(i), (iii), and (v).[39]

2. Allocation of Credit Losses Exceeding Available Resources

Rule 17Ad–22(e)(4)(viii) requires, in relevant part, that OCC establish, implement, maintain, and enforce written policies and procedures reasonably designed to address allocation of credit losses OCC may face if its collateral and other resources are insufficient to fully cover its credit exposures.[40] OCC's proposal includes three new recovery tools addressing the allocation of credit losses in the event that OCC determined that, notwithstanding the availability of any remaining resources under the Other Resource Rules, OCC may not have sufficient resources to satisfy its obligations and liabilities following a default. First, Rule 1009 would provide a framework for OCC to receive Voluntary Payments in addition to their required contribution to the Clearing Fund to address a shortfall. Second, Rule 1111 would provide a framework for Clearing Members and their customers to participate in a Voluntary Tear-Up. Third, Rule 1111 would provide the Board with the discretion to conduct a mandatory Partial Tear-Up. This tool could be used, if necessary in the event that OCC determines that its resources are inadequate to pay the applicable Partial Tear-Up Price, to allocate losses by allowing OCC to pay each relevant Clearing Member a pro rata amount of the applicable Partial Tear-Up Price based on the amount of such resources remaining. In addition, the modified powers of assessment would continue to allow OCC to use the Clearing Fund to address credit losses in the event of a member default.

Thus, the Commission believes that these additional recovery tools are reasonably designed to provide OCC with means to address allocation of credit losses that it may face if its collateral and other resources are insufficient to fully cover its credit exposures. Further, the Commission believes that these tools should address fully any credit losses that OCC may face as a result of any individual or combined default among its Clearing Members. Therefore, the Commission believes that these aspects of the proposed changes are consistent with Rule 17Ad–22(e)(4)(viii).[41]

3. Replenishment of Financial Resources Following a Default

Rule 17Ad–22(e)(4)(ix) requires, in relevant part, that OCC establish, implement, maintain, and enforce written policies and procedures reasonably designed to describe OCC's process to replenish any financial resources it may use following a default or other event in which use of resources is contemplated.[42]

The proposed changes to OCC's assessment powers would include the addition of a minimum fifteen-day cooling-off period that would be automatically triggered by a proportionate charge to the Clearing Fund arising from a Clearing Member default. At the end of the cooling-off period, a remaining Clearing Member (*i.e.,* a Clearing Member that did not choose to terminate its membership during the cooling-off period) would be obligated to replenish the Clearing Fund.

The Commission recognizes that by placing a cap on its assessment power during the cooling-off period, these revisions would effectively limit the amount of financial resources available to OCC from its Clearing Fund during that period. However, the Commission believes that these proposals would provide greater certainty and predictability regarding Clearing Members' maximum liability to the Clearing Fund, which could potentially limit loss contagion in the broader financial system. Moreover, in light of the proposed cap on OCC's assessment powers during the cooling-off period, OCC has authority under Rule 603 to call for additional initial margin from Clearing Members to ensure that OCC maintains sufficient financial resources to meet its requirements under Rule 17Ad–22(e)(4)(iii). Finally, at the end of a cooling-off period, a Clearing Member would be required to replenish the Clearing Fund in the amount necessary to meet its then-required contribution.

In light of the foregoing discussion, the Commission believes that the provisions related to OCC's assessment powers, taken together with the other components of OCC's default management procedures and recovery rules, which are reasonably designed to allow OCC to replenish its financial resources following a default or other event in which use of such resources is contemplated, are consistent with Rule 17Ad–22(e)(4)(ix).[43]

One commenter states that OCC should provide an explanation of its determination to set the cap on the powers of assessment at 200 percent during a cooling-off period.[44] In the OCC Letter, OCC provided an explanation of the internal analysis that it conducted to reach the 200 percent determination.[45] Specifically, OCC stated that it considered its ability to have sufficient financial resources inclusive of its proposed assessment powers to withstand extreme market conditions on a ''Cover-2'' basis under various scenarios, and that OCC determined that, under such scenarios, it would be able to meet its clearing obligations so long as it was able to use (1) the financial resources on hand in the Clearing Fund, and (2) the full funding of two assessments (*i.e.,* 200 percent) from non-defaulting Clearing Members.[46] Moreover, OCC stated that it reviewed the caps that other CCPs impose upon their own assessment powers and determined that the 200 percent cap is generally aligned with other assessment caps.[47] Based on review of the analysis provided by OCC and the caps of other CCPs,[48] the

[39] 17 CFR 240.17Ad–22(e)(2)(i), (iii), and (v).

[40] 17 CFR 240.17Ad–22(e)(4)(viii).

[41] 17 CFR 240.17Ad–22(e)(4)(viii).

[42] 17 CFR 240.17Ad–22(e)(4)(ix).

[43] 17 CFR 240.17Ad–22(e)(4)(ix).

[44] *See* FIA Letter at 1–2.

[45] *See* OCC Letter at 2–3.

[46] *See id.*

[47] *See id.* at 3.

[48] *See, e.g.,* Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change to Amend the ICE Clear Credit Clearing Rules, as Modified by Amendment No. 1, Relating to Default Management, Clearing House Recovery and Wind-Down, Exchange Act Release No. 79750 (Jan. 6, 2017), 82 FR 3831 (Jan. 12, 2017) (SR–ICC–2016–013) (approving a

Commission believes that the 200 percent cap in the proposed changes is consistent with Rule 17Ad–22(e)(4)(ix).

5. Authority To Take Timely Action To Contain Losses and Liquidity Demands and Continue To Meet Obligations

Rule 17Ad–22(e)(13) requires, in relevant part, that OCC establish, implement, maintain, and enforce written policies and procedures reasonably designed to ensure that it has the authority and operational capacity to take timely action to contain losses and liquidity demands and continue to meet its obligations.[49] As described above, OCC's proposal would provide OCC with modified assessment powers and new tools of Voluntary Payments, Voluntary Tear-Ups, and Partial Tear-Ups.

As discussed above, the Commission recognizes that a tear-up would result in termination of positions of non-defaulting Clearing Members. However, because OCC would only be able to use its tear-up authority after it has conducted an auction pursuant to its Rules and when OCC has determined that it may not have sufficient financial resources to meet its obligations, a tear-up would only arise in an extreme stress scenario. Further, use of tear-up in such circumstances could potentially return OCC to a matched book quickly, thereby containing its losses.

The Commission believes that these tools are designed to provide greater certainty to Clearing Members seeking to estimate the potential risks and losses arising from their use of OCC, while enabling OCC to promptly return to a matched book. The Commission believes that returning to a matched book pursuant to these provisions in the context of OCC's default management and recovery facilitates OCC's operational capacity to timely contain losses and liquidity demands while continuing to meet its obligations. Thus, the Commission believes that the proposed changes are consistent with Rule 17Ad–22(e)(13).[50]

6. Public Disclosure of Key Aspects of Default Rules

Rules 17Ad–22(e)(23)(i) and (ii) require, in relevant part, that OCC establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for the public disclosure of all relevant rules and material procedures, including key aspects of default rules and procedures, as well as sufficient information to enable participants to identify and evaluate the risks, fees and other material costs they incur by participating in OCC.[51] The Commission believes that the proposed changes address key aspects of OCC's default rules and procedures, thereby providing Clearing Members with a better understanding of the potential risks and costs they might face in an extreme event where OCC may use its proposed recovery tools, including the potential use of the Special Charge. Accordingly, the Commission believes that OCC has disclosed these key aspects of its default rules and procedures, consistent with Rule 17Ad–22(e)(23)(i) and (ii).[52]

IV. Conclusion

It is therefore noticed, pursuant to Section 806(e)(1)(I) of the Clearing Supervision Act,[53] that the Commission *does not object* to Advance Notice (SR–OCC–2017–809), as modified by Amendment No. 2, and that OCC is *authorized* to implement the proposed change as of the date of this notice or the date of an order by the Commission approving proposed rule change SR–OCC–2017–020, as modified by Amendment No. 2, whichever is later.

By the Commission.

Eduardo A. Aleman,

Assistant Secretary.

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proposed rule change including, among other things, a 300 percent cap on non-defaulting participants' liability during a cooling-off period).

[49] 17 CFR 240.17Ad–22(e)(13).

[50] *Id.*

[51] 17 CFR 240.17Ad–22(e)(23)(i) and (ii).

[52] 17 CFR 240.17Ad–22(e)(23)(i) and (ii).

[53] 12 U.S.C. 5465(e)(1)(I).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83918; File No. SR–OCC–2017–021]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change, as Modified by Partial Amendment No. 2, Concerning Updates to and Formalization of OCC's Recovery and Orderly Wind-Down Plan

August 23, 2018.

I. Introduction

On December 8, 2017, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–OCC–2017–021 (''Proposed Rule Change'') pursuant to Section 19(b) of the Securities Exchange Act of 1934 (''Exchange Act''),[1] and Rule 19b–4 [2] thereunder to propose to formalize and update its Recovery and Orderly Wind-Down Plan (''RWD Plan'').[3] The Proposed Rule Change was published for comment in the **Federal Register** on December 26, 2017.[4] On January 25, 2018, the Commission designated a longer period of time for Commission action on the Proposed Rule Change.[5] On March 22, 2018, the Commission published an order to institute proceedings to determine whether to approve or disapprove the Proposed Rule Change.[6]

On July 11, 2018, OCC filed Partial Amendment No. 1 to the Proposed Rule Change.[7] On July 13, 2018, OCC filed Partial Amendment No. 2 to the Proposed Rule Change.[8] Notice of Partial Amendments No. 1 and 2 to the Proposed Rule Change was published for public comment in the **Federal Register** on August 2, 2018,[9] and the Commission has received no comments

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Notice *infra* note 4, 82 FR 61072.

[4] Securities Exchange Act Release No. 82352 (Dec. 19, 2017), 82 FR 61072 (Dec. 26, 2017) (File No. SR–OCC–2017–021) (''Notice''). On December 8, 2017, OCC also filed a related advance notice (SR–OCC–2017–810) (''Advance Notice'') with the Commission pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled the Payment, Clearing, and Settlement Supervision Act of 2010 and Rule 19b–4(n)(1)(i) under the Exchange Act. 12 U.S.C. 5465(e)(1) and 17 CFR 240.19b–4(n)(1)(i), respectively. The Advance Notice was published in the **Federal Register** on January 23, 2018. Securities Exchange Act Release No. 82514 (Jan. 17, 2017), 83 FR 3224 (Jan. 23, 2018) (SR–OCC–2017–810).

The Financial Stability Oversight Council designated OCC a systemically important financial market utility on July 18, 2012. *See* Financial Stability Oversight Council 2012 Annual Report, Appendix A, *available at http://www.treasury.gov/initiatives/fsoc/Documents/2012%20Annual%20Report.pdf.* Therefore, OCC is required to comply with the Payment, Clearing and Settlement Supervision Act and file advance notices with the Commission. *See* 12 U.S.C. 5465(e).

[5] Securities Exchange Act Release No. 82586 (Jan. 25, 2018), 83 FR 4527 (Jan. 31, 2018) (File No. SR–OCC–2017–021).

[6] Securities Exchange Act Release No. 82927 (Mar. 22, 2018), 83 FR 13176 (Mar. 27, 2018) (File No. SR–OCC–2017–021).

[7] In Partial Amendment No. 1, OCC made three modifications to the Notice: (1) Removal of sections of the RWD Plan concerning OCC's proposed authority to require cash settlement of certain physically delivered options and single stock futures; (2) updating the list of OCC's Critical Support Functions; and (3) making three changes to the RWD Plan to conform to a change contemporaneously proposed in Partial Amendment No. 2 to OCC filing SR–OCC–2017–020 concerning enhanced and new tools for recovery scenarios.

[8] Partial Amendment No. 2 superseded and replaced Partial Amendment No. 1 in its entirety, due to technical defects in Partial Amendment No. 1.

[9] *See* Securities Exchange Act Release No. 83732 (Jul. 27, 2018), 83 FR 37864 (Aug. 2, 2018) (''Notice of Amendment'').

in response. This order approves the Proposed Rule Change as modified by Partial Amendment No. 2 (''Amended Proposed Rule Change'').

II. Description of the Amended Proposed Rule Change [10]

OCC's proposal would formalize and update its RWD Plan. The purpose of the RWD Plan is to: (i) Demonstrate that OCC has considered the scenarios which may potentially prevent it from being able to provide the services OCC determined to be critical as a going-concern; (ii) provide appropriate plans for OCC's recovery or orderly wind-down based on the results of such consideration; and (iii) impart to relevant authorities the information reasonably anticipated to be necessary for purposes of recovery and orderly wind-down planning.

The RWD Plan would identify the services provided by OCC that OCC has determined to be critical, and it would set forth five qualitative events that could trigger a recovery scenario and six qualitative events that could trigger an orderly wind-down. It would also address six scenarios that describe OCC's possible responses to series of stresses. The RWD Plan would also include an overview designed to provide information that OCC believes would be essential to relevant authorities for purposes of recovery and orderly wind-down planning, as well as to provide readers of the Plan with necessary context for subsequent discussion and analysis. The overview would also include a detailed description of OCC's business, summarizing the role OCC has in the options market as well as the services and products it provides to its clearing members and market participants. The RWD Plan would identify fourteen internal support functions at OCC and provide a brief description of the activities performed by each support function. Similar to the information regarding OCC's business, this information is designed to inform the relevant authorities for orderly wind-down planning and as necessary context for understanding other elements of the RWD Plan.

A. Designating Critical Services and Critical Support Functions

The RWD Plan would define the terms ''Critical Services'' and ''Critical Support Functions.'' Specifically, a Critical Service would be a service provided by OCC that, if interrupted, would likely have a material negative impact on participants or significant third parties, give rise to contagion, or undermine the general confidence of markets that OCC serves. A Critical Support Function would be a function within OCC that must continue in some capacity for OCC to be able to continue providing its Critical Services.

The RWD Plan would describe the framework that OCC uses to determine whether a service is critical. This framework includes four criteria to determine if failure or discontinuation of a particular service would impact financial and operational capabilities of OCC's clearing members, other FMUs, or the broader financial system: (1) Market dominance, (2) substitutability, (3) interconnectedness, and (4) barriers to entry. The current set of services designated as Critical Services under the RWD Plan is based on the analysis of these measureable indicators and subsequent internal discussion at OCC. The Critical Services currently include, but are not limited to, clearance services for listed options and clearance services for futures.

B. Recovery Plan

The RWD Plan would include plans for recovery from scenarios that could prevent OCC from providing Critical Services.[11] After discussing particular scenarios, the RWD Plan identifies the tools that OCC could use as warranted in such scenarios. These tools fall into two categories: (1) Enhanced Risk Management Tools, and (2) Recovery Tools. An Enhanced Risk Management Tool is a tool that is designed to supplement OCC's existing processes and other existing tools in scenarios where OCC faces heightened stresses, while a Recovery Tool is a tool that is generally limited to a scenario in which a specific trigger has occurred. In its RWD Plan, OCC would define a set of five such qualitative trigger events (''Recovery Trigger Events'').

The sequence and timing of the deployment of each Recovery Tool is more structured and lacks the flexibility inherent in the sequence and timing for use of the Enhanced Risk Management Tools. For each tool, the RWD Plan provides an overview of the tool, and, as appropriate, a discussion of its implementation with an estimated time frame for use of the tool, key risks associated with use of the tool, and the expected impact and incentives of using the tool.

1. Enhanced Risk Management Tools

OCC stated that the Enhanced Risk Management Tools would be used prophylactically in an effort to prevent the occurrence of a Recovery Trigger Event and would not be limited to recovery. OCC would not anticipate applying a rigid order or timing for the deployment of the Enhanced Risk Management Tools. The RWD Plan would include five Enhanced Risk Management Tools: (1) Use of Current/Retained Earnings; (2) Minimum Clearing Fund Cash Contribution; (3) Borrowing Against Clearing Fund; (4) Credit Facility; and (5) Non-Bank Facility.

Use of Current/Retained Earnings. Under its By-Laws, OCC may use current and/or retained earnings to discharge a loss that would be chargeable against the Clearing Fund, but would require unanimous consent from the holders of OCC's Class A and Class B common stock. The RWD Plan acknowledges that the utility of this tool is limited by the requirement for shareholder consent and that OCC's retained earnings presently amount to a small fraction of OCC's existing prefunded Clearing Fund resources. OCC stated that, given this amount, the maximum utility of this tool may be realized in specific circumstances at either the beginning of OCC's loss waterfall or toward the end of OCC's loss waterfall, where it would be sufficient to fully extinguish liabilities without triggering the use of another tool.

Minimum Clearing Fund Cash Contribution. Under its current rules, OCC Clearing Members collectively contribute $3 billion in cash to OCC's Clearing Fund.[12] In addition, OCC may, in certain limited circumstances, increase the minimum cash requirement up to the then-minimum size of the Clearing Fund.[13] The RWD Plan would acknowledge that increasing the minimum cash requirement would require preparation of OCC documentation that considers the

[10] Capitalized terms used but not defined herein have the meanings specified in OCC's Rules and By-Laws, *available at https://www.theocc.com/about/publications/bylaws.jsp.*

[11] For the purposes of the RWD Plan, OCC defines ''recovery'' as ''the actions of [a financial market utility], consistent with its rules, procedures, and other ex-ante contractual arrangements, to address any uncovered credit loss, liquidity shortfall, capital inadequacy, or business, operational or other structural weakness, including the replenishment of any depleted pre-funded financial resources and liquidity arrangements, as necessary to maintain the [financial market utility's] viability as a going concern.''

[12] *See* OCC By-Laws, Art. VIII, Section 3(a)(i). The Commission recently approved a proposal by OCC that, after implementation, would move this section of the OCC By-Laws to OCC Rule 1002(a)(i). *See* Securities Exchange Act Release No. 83735 (Jul. 27, 2018), 83 FR 37855, 37859 (Aug. 2, 2018) (SR–OCC–2018–008) (''Order Approving Proposed Rule Change, as Modified by Amendments No. 1 and 2, Related to OCC's Stress Testing and Clearing Fund Methodology'').

[13] *See* OCC By-Laws, Art. VIII, Section 3(a)(i).

projected liquidity demands for successful management of a defaulted Clearing Member.

Borrowing Against Clearing Fund. OCC has the authority to borrow against the Clearing Fund in three circumstances: (1) To meet obligations arising out of the default or suspension of a Clearing Member or any action taken by OCC under Chapter XI of its rules pertaining to the suspension of a clearing member; (2) to borrow or otherwise obtain funds from third parties in lieu of immediately charging the Clearing Fund for a loss that is reimbursable out of the Clearing Fund; and (3) to meet liquidity needs for same-day settlement as a result of the failure of any bank or securities or commodities clearing organization to achieve daily settlement.[14] The RWD Plan would acknowledge that any borrowing would require preparation of OCC documentation in accordance with OCC procedures. Further, the RWD Plan would recognize that the availability of this tool in advance of a heightened stress scenario would be unknown because OCC's primary liquidity facilities could already be fully or partially utilized.

Credit Facility and Non-Bank Liquidity Facility. OCC maintains a $2 billion dollar senior secured 364-day revolving credit facility with a syndicate of lenders for the purpose of providing OCC with liquidity to meet settlement obligations as a central counterparty. The RWD Plan would recognize that an inherent risk of the credit facility is that a portion of the syndicate may not provide funds in timely response to OCC's request. OCC also maintains a $1 billion dollar secured non-bank liquidity facility for the purpose of providing OCC with a non-bank liquidity resource to meet settlement obligations as a central counterparty. Similar to the risk associated with the credit facility, the RWD Plan would recognize the risk that OCC's counterparty may not timely execute the transaction under the non-bank liquidity facility.

2. Recovery Tools

Under the RWD Plan, Recovery Tools would be different from Enhanced Risk Management Tools because OCC's use of a Recovery Tool is generally limited to a scenario in which a Recovery Trigger has occurred. The RWD Plan would identify five Recovery Tools, the last four of which would generally be deployed in the order they are described here: (1) Replenishment Capital; (2) Assessment Powers; (3) Voluntary Payments; (4) Voluntary Tear-Up; and (5) Partial Tear-Up.[15] As noted above, the sequence and timing of deployment of the Recovery Tools would be more structured than the sequence and timing of the use of Enhanced Risk Management Tools.

Replenishment Capital. OCC holds capital contributed by its stockholder exchanges who have committed to replenish OCC's capital if it falls below a certain threshold.[16] The RWD Plan would include the replenishment of capital by OCC's stockholder exchanges as a recovery tool.

Assessment Powers. Under OCC's rules, OCC has authority to assess a non-defaulting Clearing Member during any cooling-off period for an amount equal to 200 percent of the Clearing Member's then-required contribution to the Clearing Fund.[17] Following the end of the cooling-off period, each remaining Clearing Member must replenish the Clearing Fund in the amount necessary to meet its then-required contribution.[18] The RWD Plan would recognize the risk that the use of assessment powers may incentivize Clearing Members to withdraw from membership in OCC to avoid replenishment, and that such withdrawals would limit the resources available to OCC for future assessments.

Voluntary Payments. OCC's rules provide a framework by which OCC can receive voluntary payments in response to a Clearing Member default. Use of this tool is permissible only where OCC has determined that it may not have sufficient resources to satisfy its obligations and liabilities arising out of the default. The RWD Plan would describe the processes involved in calling for and receiving voluntary payments, including the issuance of a notice to Clearing Members. The RWD Plan would recognize the risk that Clearing Members would be unwilling or unable to make voluntary payments. As an incentive for Clearing Members to provide voluntary payments, a non-defaulting Clearing Member who made a voluntary payment would receive priority in reimbursement from amounts recovered by OCC from the estate of a defaulting Clearing Member.

Voluntary Tear-up. OCC's rules provide a framework by which non-defaulting Clearing Members and customers could be permitted to voluntarily extinguish (*i.e.,* voluntarily tear-up) open positions in response to a Clearing Member default. Voluntary Tear-up is permissible only where OCC has determined that it may not have sufficient resources to satisfy its obligations and liabilities arising out of the default. The RWD Plan would contemplate that OCC would initiate any tear-up process after the market close on the day that OCC determines it may have insufficient resources. The RWD Plan would further anticipate that OCC would publish notice of tear-up no later than the following morning (prior to the market open), and that positions would be extinguished following the market close. The RWD Plan would also recognize the risk that Clearing Members would be unwilling or unable to participate in the voluntary tear-up process. A non-defaulting Clearing Member that faced losses, costs, or expenses in reestablishing voluntarily torn-up positions could receive compensation from amounts recovered by OCC from the estate of a defaulting Clearing Member ahead of other Clearing Members that faced such losses, costs, or expenses after reestablishing torn up positions.

Partial Tear-up. OCC's rules provide a framework by which OCC could extinguish the remaining open positions of a defaulted Clearing Member or its customers (*i.e.,* Partial Tear-up) in response to a Clearing Member default. The RWD Plan would anticipate that the Partial Tear-up process would be intertwined with the Voluntary Tear-up process described above. The RWD Plan also would contemplate the compensation of Clearing Members facing losses, costs, or expenses after reestablishing torn up positions from Clearing Fund contributions.

The RWD Plan also would provide a mapping of Enhanced Risk Management Tools and Recovery Tools to different types of risk exposures. Such risk

[14] *See* OCC By-Laws, Art. VIII, Section 5(e). The Commission recently approved a proposal by OCC that, after implementation, would move this section of the OCC By-Laws to OCC Rule 1006(f). *See* Order Approving Proposed Rule Change Related to OCC Stress Testing and Clearing Fund Methodology, *supra* note 12, 83 FR at 37859.

[15] For a more detailed description of the Recovery Tools numbered (2) through (5) here, please see Securities Exchange Act Release No. 83916 (Aug. 23, 2018) (SR–OCC–2017–020).

[16] The requirement to replenish OCC's capital was adopted as part of OCC's plan to raise and maintain capital at a specified level (''Capital Plan''). *See* Securities Exchange Act Release No. 77112 (Feb. 11, 2016), 81 FR 8294 (Feb. 18, 2016) (SR–OCC–2015–02). The Capital Plan was later subject to judicial review by the U.S. Court of Appeals for the District of Columbia Circuit, which remanded for the Commission to further analyze whether the Capital Plan is consistent with the Exchange Act. *Susquehanna Int'l Grp., LLP v . SEC,* 866 F.3d 442 (D.C. Cir. 2017). The Commission's review of the Capital Plan on remand is ongoing, and the Capital Plan remains in effect during this ongoing review.

[17] The cooling-off period is the period following a proportionate charge assessed by OCC against the Clearing Members' Clearing Fund contributions. It is a minimum of fifteen days, but could extend to as much as twenty days from the date of the proportionate charge based on intervening events.

[18] A Clearing Member may avoid liability for replenishment by terminating its membership in OCC prior to the end of the cooling-off period.

exposures include: (1) Uncovered credit losses; (2) liquidity shortfalls; (3) replenishment of financial resource; (4) losses related to business, operational, or other structural weaknesses; and (5) re-establishment of a matched book. The RWD Plan discusses how each tool would apply to these risk categories and would reference the stress scenarios contemplated by the RWD Plan.

The RWD Plan would outline an escalation process for the occurrence of each Recovery Trigger.[19] Under the RWD Plan, OCC's Enterprise Risk Management and Financial Risk Management groups would be responsible for recommending which, if any, of the tools described above should be used in a given situation. Further, OCC's Chief Executive Officer and Executive Chairman would be responsible for approval of such recommendations, and OCC's Chief Risk Officer and Management Committee would be responsible for overseeing deployment of such tools. Finally, OCC's Board and the Risk Committee of the Board would be responsible for generally overseeing OCC's recovery efforts.

C. Orderly Wind-Down Plan

The RWD Plan would also include OCC's wind-down plan and include scenarios that could prevent OCC from being able to provide Critical Services as a going-concern. OCC would identify its wind-down objective as the pursuit of financial stability and ensuring the continuity of critical functions. The RWD Plan would provide OCC's assumptions concerning the wind-down process regarding: (1) Duration of wind-down; (2) cost of wind-down; (3) OCC's capitalization; and (4) the maintenance of Critical Services and Critical Support Functions. It also would identify six wind-down triggers (''WDP Trigger Events''), the occurrence of which could jeopardize the viability of OCC's recovery. Under the RWD Plan, the occurrence of a WDP Trigger Event would necessitate notification of regulators, including the Commission, the U.S. Commodity Futures Trading Commission, and the Federal Deposit Insurance Corporation, as well as internal notifications to OCC senior management.

The RWD Plan would reference critical interconnections and key agreements for consideration in the context of wind-down. The RWD Plan also would discuss OCC's key actions in wind-down including the: (1) Decision by OCC's Board to initiate wind-down; (2) institution of heightened clearing member requirements; (3) imposition of heightened capital requirements for clearing members; (4) imposition of increased margin requirements; (5) cessation of investment by OCC; (6) institution of new operational practices; and (7) targeted reductions in force.

The RWD Plan also would identify transactions that could be entered into to accomplish OCC's wind-down objectives: (1) Stock transactions; (2) merger transactions; and (3) asset transactions. The RWD Plan focuses discussion of wind-down transactions on issues including, but not limited to, governance and regulatory issues. The goal of any such transaction would be to transfer ownership of OCC in a manner that ensures the continuation of OCC's critical services; however, the RWD Plan also would contemplate the cessation of Critical Services through OCC's existing close-out netting rules.[20]

D. Governance

The RWD Plan would also memorialize the governance processes for maintenance, review, and approval of the RWD Plan. Under the RWD Plan, all changes would originate in a recommendation from OCC's RWD Working Group. Changes would go through a series of consecutive rounds of review and approval by OCC's Management Committee, the Risk Committee of OCC's Board of Directors, and the full Board of Directors, which would have final approval authority.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Exchange Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to such organization.[21] After carefully considering the Amended Proposed Rule Change, the Commission believes the proposal is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to OCC. More specifically, the Commission finds that the Amended Proposed Rule Change is consistent with Section 17A(b)(3)(F) of the Exchange Act[22] and Rules 17Ad–22(e)(2)(i), (iii), and (v), 17Ad–22(e)(3)(ii), and 17Ad–22(e)(15)(i) thereunder.[23]

A. Consistency With Section 17A(b)(3)(F) of the Exchange Act

Section 17A(b)(3)(F) of the Exchange Act requires that the rules of a clearing agency be designed to, among other things, promote the prompt and accurate clearance and settlement of securities transactions, assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, and, in general, to protect investors and the public interest.[24]

As described above, the RWD Plan would specify the Enhanced Risk Management Tools and Recovery Tools available to OCC in recovery and in an orderly wind-down, as well as the governance framework applicable to the use of such tools. The RWD Plan would analyze the use of the Enhanced Risk Management Tools and Recovery Tools, the incentives created by such tools, and the risks associated with using such tools. The Commission believes that by specifying the tools that OCC would take in either a recovery or a wind-down, the RWD Plan would enhance OCC's ability to address circumstances specific to an extreme stress event, thereby increasing the likelihood that OCC could execute a successful recovery or orderly wind-down in such an event. In increasing the likelihood that OCC could execute a successful recovery or orderly wind-down, the RWD Plan would enhance OCC's ability to maintain continuity of its critical services (including clearance and settlement services) during, through, and following periods of extreme stress giving rise to the need for recovery, thereby promoting the prompt and accurate clearance and settlement of securities transactions. The Commission also believes that the rules proposed in the RWD Plan are designed to assure the safeguarding of securities or funds in the custody or control of OCC by reducing the likelihood of a disorderly or unsuccessful recovery or wind-down, which could otherwise disrupt access to such securities or funds.

Further, the Commission believes that the RWD Plan is designed, in general, to protect investors and the public interest by establishing a plan to effectuate an orderly wind-down. The RWD Plan's governance processes and regulatory notice provisions could facilitate either the orderly transfer of OCC's Critical Services to another entity or the orderly

[19] The RWD Plan also would discuss notification of regulators, including the Commission, the U.S. Commodity Futures Trading Commission, and the Federal Deposit Insurance Corporation, in response to the occurrence of a Recovery Trigger.

[20] *See also* OCC By-Laws, Art. VI, Section 27.

[21] 15 U.S.C. 78s(b)(2)(C).

[22] 15 U.S.C. 78q–1(b)(3)(F).

[23] 17 CFR 240.17Ad–22(e)(2)(i), (iii), and (v); (e)(3)(ii); (e)(15)(i).

[24] 15 U.S.C. 78q–1(b)(3)(F).

close-out of positions. Providing additional information regarding the potential orderly transfer of services or close-out of positions would benefit Clearing Members and their customers by providing greater transparency and certainty regarding the potential disposition or treatment of their positions and assets at OCC, thereby benefiting market participants more broadly.

Therefore, the Commission believes that the Amended Proposed Rule Change would promote the prompt and accurate clearance and settlement of securities transactions, assure the safeguarding of securities and funds in OCC's custody and control, and, in general, protect investors and the public interest, consistent with the Section 17A(b)(3)(F) of the Act.[25]

B. Consistency With Rules 17Ad–22(e)(2)(i), (iii), and (v) Under the Exchange Act

Rules 17Ad–22(e)(2)(i), (iii), and (v) require that OCC establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent, that support the public interest requirements in Section 17A of the Exchange Act applicable to clearing agencies, and the objectives of owners and participants, and that specify clear and direct lines of responsibility.[26]

The RWD Plan would outline an escalation process for the occurrence of a Recovery Trigger Event, which would provide a governance framework for the use and functioning of the Enhanced Risk Management Tools and Recovery Tools in addition to those specified elsewhere in OCC's rules. It would also identify the internal notification requirements that would apply to WDP Trigger Events and establish the role of the Board in determining whether to enter into a wind-down or take other key actions, consistent with the governance specified elsewhere in OCC's rules.

Moreover, the RWD Plan would identify the internal governance process for the approval of subsequent changes to OCC's RWD Plan. The RWD Plan would also specify the process OCC would take to receive input from various parties at OCC, including management and the Board.

Taken together, the Commission believes that these lines of control could contribute to establishing, implementing, maintain and enforcing clear and transparent governance arrangements that support the public interest requirements in Section 17A of the Exchange Act applicable to clearing agencies, and the objectives of owners and participants.

Therefore, the Commission believes that the proposed changes are consistent with Rules 17Ad–22(e)(2)(i), (iii), and (v).[27]

C. Consistency With Rule 17Ad–22(e)(3)(ii) Under the Exchange Act

Rule 17Ad–22(e)(3)(ii) requires that OCC establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by OCC, which includes plans for the recovery and orderly wind-down of OCC necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.[28]

The Commission believes that the information the RWD Plan would provide about the OCC's recovery tools would enhance OCC's ability to recover from credit losses, liquidity shortfalls, general business risk losses, or other losses, consistent with Rule 17Ad–22(e)(3)(ii).[29] Specifically, the information from the RWD Plan would enable OCC to prepare in advance for the use of such tools, which would in turn enhance OCC's ability to use such tools effectively to carry out a successful recovery. In addition, by establishing a single source of information about, and steps needed to effectuate, a recovery of OCC, the RWD Plan would allow OCC personnel to effectuate a recovery in a consistent and coordinated fashion, and would thereby increase the likelihood of a successful recovery. Moreover, by identifying and assessing available Enhanced Risk Management Tools and Recovery Tools, the Commission believes that the RWD Plan would enhance OCC's ability to use such tools effectively to bring about a recovery by identifying in advance which tools may be most effective for different situations or needs, consistent with Rule 17Ad–22(e)(3)(ii).[30]

Similarly, in providing detailed information about the assumptions, actions, and objectives related to triggering and implementing the wind-down portion of the RWD Plan, discussed in more detail above, the Commission believes that the RWD Plan would enhance OCC's ability to effectuate an orderly wind-down, consistent with Rule 17Ad–22(e)(3)(ii).[31] Specifically, by setting out in advance the potential events that could cause OCC to trigger, and transactions by which OCC would effectuate, a wind-down, the RWD Plan would enable OCC to prepare in advance for a wind-down, which the Commission believes would enhance OCC's ability to use the RWD Plan effectively to carry-out an orderly wind-down. In addition, by establishing a single source of information about, and steps needed to effectuate, a wind-down of OCC, the Commission believes the RWD Plan would allow OCC personnel to effectuate a wind-down in a consistent and coordinated fashion, and would thereby increase the likelihood of an orderly wind-down. Finally, the RWD Plan would identify the legal basis for OCC's actions with respect to a potential wind-down, including relevant citations to provisions of the rule books of its various clearing services and contractual agreements, which the Commission believes would further facilitate an orderly wind-down process by providing OCC with a single source of information and steps needed for a wind-down, consistent with Rule 17Ad–22(e)(3)(ii).[32]

Therefore, the Commission believes that the proposed changes to adopt plans for the recovery and orderly wind-down of OCC are consistent with Rule 17Ad–22(e)(3)(ii).[33]

D. Consistency With Rules 17Ad–22(e)(15)(i) Under the Exchange Act

Rule 17Ad–22(e)(15)(i) requires OCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage its general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses so that OCC can continue operations and services as a going concern if those losses materialize, including by determining the amount of liquid net assets funded by equity based upon its general business risk profile and the length of time required to achieve a recovery or orderly wind-down, as appropriate, of its critical operations and services if such action is taken.[34]

OCC's RWD Plan would estimate costs related to a wind-down based on a series of assumptions laid out in the RWD Plan. These assumptions include

[25] 15 U.S.C. 78q–1(b)(3)(F).

[26] 17 CFR 240.17Ad–22(e)(2)(i), (iii), and (v).

[27] *Id.*

[28] 17 CFR 240.17Ad–22(e)(3)(ii).

[29] *Id.*

[30] *Id.*

[31] *Id.*

[32] *Id.*

[33] *Id.*

[34] 17 CFR 240.17Ad–22(e)(15)(i).

duration of the wind-down process, OCC's capitalization through the wind-down process, the maintenance of Critical Services and Critical Support Functions, and the retention of personnel and contractual relationships. OCC also provided information regarding its assumption about the cost of the wind-down process. Further, the RWD Plan identifies potential transactions that could be effected to accomplish the objectives of wind-down with the ultimate goal of transferring ownership of OCC itself by the consummation or a consensual sale or similar transaction, in a manner that ensures the continuation of OCC's Critical Services. The Commission considered the assumptions that the RWD Plan makes regarding wind-down as well as the potential transactions in which OCC might engage in the event of a wind-down. The Commission also considered the estimated cost of wind-down noted in the RWD Plan in light of OCC's rules regarding the maintenance of certain capital levels and qualifying liquid resources. The Commission believes that the RWD Plan, which indicates the cost at which OCC could effectuate an orderly wind-down, *i.e.,* at a lower cost than the amount of its liquid resources is consistent with Rule 17Ad–22(e)(15)(i).[35]

Therefore, the Commission believes that the proposed changes that would determine costs associated with an orderly wind-down and that would further ensure that OCC holds liquid net assets greater than these costs, are consistent with Rule 17Ad–22(e)(15)(i).[36]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the Amended Proposed Rule Change is consistent with the requirements of the Exchange Act, and in particular, with the requirements of Section 17A of the Exchange Act[37] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[38] that the Proposed Rule Change (SR–OCC–2017–021), as modified by Partial Amendment No. 2, be, and it hereby is, approved.

[35] *Id.*

[36] *Id.*

[37] In approving this Proposed Rule Change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[38] 15 U.S.C. 78s(b)(2).

[39] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[39]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–18673 Filed 8–28–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83925; File No. SR–CboeBYX–2018–017]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for Use on Cboe BYX Exchange, Inc.

August 23, 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 9, 2018, Cboe BYX Exchange, Inc. (the ''Exchange'' or ''BYX'') 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 Exchange's fee schedule applicable to its equities trading platform to: (1) Increase the ADV requirements to qualify for Add/Remove Volume Tier 6 associated with fee codes W, BB, and N, and (2) increase the routing fee charged to orders routed to Investors Exchange LLC using the Destination Specific routing strategy under fee code IX, and eliminate an outdated reference to the TRIM and TRIM2 routing strategies in this fee code.

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.

[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).

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 purpose of the proposed rule change is to amend the Exchange's fee schedule applicable to its equities trading platform (''BYX Equities'') to: (1) Increase the ADV[5] requirements to qualify for Add/Remove Volume Tier 6 associated with fee codes W,[6] BB,[7] and N,[8] and (2) increase the routing fee charged to orders routed to Investors Exchange LLC (''IEX'') using the Destination Specific[9] routing strategy under fee code IX,[10] and eliminate an outdated reference to the TRIM and

[5] ''ADAV'' means average daily added volume calculated as the number of shares added per day and ''ADV'' means average daily volume calculated as the number of shares added or removed, combined, per day. *See* BYX Fee Schedule, Definitions. ADAV and ADV are calculated on a monthly basis. The Exchange excludes from its calculation of ADAV and ADV shares added or removed on any day that the Exchange's system experiences a disruption that lasts for more than 60 minutes during regular trading hours (''Exchange System Disruption''), on any day with a scheduled early market close and on the last Friday in June (the ''Russell Reconstitution Day''). Routed shares are not included in ADAV or ADV calculation. With prior notice to the Exchange, a Member may aggregate ADAV or ADV with other Members that control, are controlled by, or are under common control with such Member (as evidenced on such Member's Form BD).

[6] W is associated with orders that remove liquidity from BYX in Tape A securities.

[7] BB is associated with orders that remove liquidity from BYX in Tape B securities.

[8] N is associated with orders that remove liquidity from BYX in Tape C securities.

[9] Destination Specific is a routing option under which an order checks the System for available shares and then is sent to an away trading center or centers specified by the User. *See* Rule 11.13(b)(3)(E).

[10] IX is associated with orders routed to IEX using the Destination Specific, TRIM or TRIM2 routing strategies.

TRIM2 [11] routing strategies in this fee code.

Fee Codes W, BB, and N: Add/Remove Volume Tier 6

The Exchange provides a standard rebate of $0.00050 for orders that remove liquidity from BYX in securities priced at or above $1.00. Members may also qualify for a higher rebate based on the Exchange's Add/Remove Volume Tiers, which are designed to encourage Members to bring order flow to BYX by providing higher rebates for removing liquidity and discounted fees for adding liquidity to firms based on their activity on the Exchange.[12] Currently, Members can qualify for a higher rebate of $0.0015 pursuant to Tier 6 of the Add/Remove Volume Tiers if the Member has: (1) An ADV that is greater than or equal to 0.05% of TCV,[13] and (2) an ADAV that is greater than or equal to 500,000 shares. The Exchange proposes to increase the ADV requirement for Tier 6 so that an ADV that is greater than or equal to 0.08% of TCV would be required. The current ADAV requirement of greater than or equal to 500,000 shares would remain unchanged. The proposed change applies to fee codes W, BB, and N, which relate to orders that remove liquidity from BYX in Tapes A, B, and C, respectively.

Fee Code IX: IEX Routing Fees

Currently, the fee schedule provides that orders in securities priced at or above $1.00 routed to IEX using specified routing strategies—*i.e.,* Destination Specific, TRIM, or TRIM2—are charged a fee of $0.0010 per share under fee code IX. The Exchange proposes to increase the routing fee charged to orders routed to IEX to $0.0030 so that the Exchange can recoup increased costs associated with routing order flow to that market. Furthermore, in May 2018, the Exchange removed IEX from the System routing table for its TRIM and TRIM2 routing strategies, which are designed to route to low cost away markets, due to increased costs associated with routing to IEX. Since IEX is no longer considered as a potential routing destination for those strategies, the Exchange proposes to eliminate the reference to these routing strategies in fee code IX.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[14] in general, and furthers the objectives of Section 6(b)(4) and 6(b)(5),[15] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities and is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

Fee Codes W, BB, and N: Add/Remove Volume Tier 6

The Exchange believes that the proposed changes to the Add/Remove Volume Tier 6 are reasonable because the proposed changes are designed to incentivize Members to bring more order flow to the Exchange. Under the Exchange's fee schedule members are eligible for a rebate for liquidity removing orders that may be increased based on meeting certain additional requirements. With respect to Add/Remove Volume Tier 6, Members that meet specified ADV and ADAV requirements are eligible for such an increased remove rebate. The Exchange is proposing to increase the ADV requirements for this rebate tier to encourage Members to send more order flow to the Exchange in order to qualify for the rebate. The Exchange believes that the rebates are still competitive with rebates provided on other equities exchanges, notwithstanding the higher volume requirements required to meet this tier. The Exchange also believes that the proposed change is equitable and not unfairly discriminatory because the proposed ADV requirements (and associated rebate) would apply equally to all Members. Furthermore, the Exchange believes that all market participants would benefit from additional trading opportunities if the Exchange is successful in incentivizing increased order flow.

Fee Code IX: IEX Routing Fees

As other exchanges amend the fees charged for accessing liquidity, the Exchange believes that it is appropriate to amend its own routing fees so that it can recoup costs associated with routing orders to such away markets. The Exchange believes that the proposed fees for orders routed to IEX are reasonable because they reflect the costs associated with executing orders on IEX and additional operational expenses incurred by the Exchange. The Exchange is proposing to increase its routing fees due to an announced change in IEX's fee schedule that would result in a significant increase in the transaction fees being charged by IEX to some orders, including orders routed by the Exchange.[16] The Exchange believes that it is reasonable to pass these increased costs to Members that use the Exchange to route orders to that market. Members that do not wish to pay the proposed fee can send their routable orders directly to IEX instead of using routing functionality provided by the Exchange. The Exchange also believes that this change is equitable and not unfairly discriminatory because the proposed fees would apply equally to all Members that use the Exchange to route orders to IEX using the Destination Specific routing strategy. Routing through the Exchange is voluntary, and the Exchange operates in a competitive environment where market participants can readily direct order flow to competing venues or providers of routing services if they deem fee levels to be excessive.

The Exchange also believes that the proposed change to eliminate references to TRIM and TRIM2 is consistent with the public interest and the protection of investors as this is a non-substantive change being made because the Exchange no longer routes to IEX using these routing strategies. The Exchange had previously routed orders to IEX using the TRIM and TRIM2 order routing strategies, which are designed to route to low cost venues, but recently stopped doing so due increased routing costs associated with trading on IEX. As such, the Exchange believes that updating the fee schedule to reflect that these two routing strategies are not available for routing to IEX will increase transparency around the operation of the Exchange to the benefit of Members and investors. Because this change merely updates a fee code to remove references to routing strategies that are not in use on the Exchange, it will have

[11] TRIM and TRIM2 are both routing options under which an order checks the System for available shares and then is sent to destinations on the applicable System routing table. *See* Rule 11.13(b)(3)(G).

[12] *See* BYX Fee Schedule, footnote 1, Add/Remove Volume Tiers.

[13] ''TCV'' means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply. The Exchange excludes from its calculation of TCV volume on any day that the Exchange experiences an Exchange System Disruption, on any day with a scheduled early market close and the Russell Reconstitution Day.

[14] 15 U.S.C. 78f.

[15] 15 U.S.C. 78f(b)(4) and (5).

[16] *See* SR–IEX–2018–16 (pending publication).

no impact on the transaction fees actually assessed to Members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The proposed changes to the Add/Remove Tiers are designed to incentivize Members to bring more order flow to BYX as the Exchange competes for order flow with other equities markets. Furthermore, the proposed changes to the IEX routing fees are meant to recoup costs associated with executing orders on that market, and to increase transparency by properly reflecting the routing strategies available for IEX, and are therefore not designed to have any significant impact on competition. 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) 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 proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBYX–2018–017 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–CboeBYX–2018–017. 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 will also 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–CboeBYX–2018–017 and should be submitted on or before September 19, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–18676 Filed 8–28–18; 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. 34–83923; File No. SR–CBOE–2018–059]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Delay the Implementation Date of Changes to Cboe Options Rule 24A.4, Interpretation and Policy .02, Concerning FLEX Options

August 23, 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 14, 2018, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to delay the implementation date of rule change SR–CBOE–2018–008 to permit all FLEX series to be fungible with the corresponding non-FLEX series once an identical non-FLEX series becomes listed.

(additions are *in italics;* deletions are [bracketed])

* * * * *

Rules of Cboe Exchange, Inc.

* * * * *

Rule 24A.4. Terms of FLEX Options

* * * * *

. . . Interpretations and Policies:

.01 No change.

.02

The below version of Interpretation and Policy .02 will remain in effect until [an effective date specified by the Exchange in a Regulatory Circular. The effective date shall be no later than July 31, 2018, and the Regulatory Circular announcing the effective date shall be

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

issued at least 30 days prior to the effective date] *August 21, 2018.*

Provided the options on an underlying security or index are otherwise eligible for FLEX trading, FLEX Options shall be permitted in puts and calls that do not have the same exercise style, same expiration date and same exercise price as Non-FLEX Options that are already available for trading on the same underlying security or index. FLEX Options shall also be permitted before the options are listed for trading as Non-FLEX Options. Once and if the option series are listed for trading as Non-FLEX Options, (i) all existing open positions established under the FLEX trading procedures shall be fully fungible with transactions in the respective Non-FLEX Option series and (ii) any further trading in the series would be as Non-FLEX Options subject to the Non-FLEX trading procedures and rules. However, in the event the Non-FLEX series is added intra-day, a position established under the FLEX trading procedures would be permitted to be closed using the FLEX trading procedures for the balance of the trading day on which the Non-FLEX series is added against another closing only FLEX position. For such FLEX series, the FLEX Official will make an announcement that the FLEX series is now restricted to closing transactions; a FLEX Request for Quotes may not be disseminated for any order representing a FLEX series having the same terms as a Non-FLEX series, unless such FLEX Order is a closing order (and it is the day the Non-FLEX series has been added); and only responses that close out an existing FLEX position are permitted. Any transactions in a restricted series that occur that do not conform to these requirements will be nullified by the FLEX Official pursuant to Rule 24A.14.

The below version of Interpretation and Policy .02 shall be in effect on [the effective date specified by the Exchange in a Regulatory Circular. The effective date shall be no later than July 31, 2018, and the Regulatory Circular announcing the effective date shall be issued at least 30 days prior to the effective date]*August 21, 2018.*

* * * * *

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, 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

On May 9, 2018, the Securities and Exchange Commission (the ''Commission'') approved certain changes to Rule 24A.4, Interpretation and Policy .02 (SR–CBOE–2018–008), which changes allowed flexibility structured options (''FLEX Options'') with quarterly expirations, short-term expirations, weekly expirations, and End-of-Month expirations to be fungible with Non-FLEX Options that have identical terms.[5] Pursuant to SR–CBOE–2018–008, the proposed changes would not take effect until a date specified by the Exchange in a Regulatory Circular, which date would be no later than July 31, 2018. The Regulatory Circular announcing the effective date was required to be issued at least 30 days prior to the effective date.

As noted in SR–CBOE–2018–008, to give effect to the Cboe Options rule change, the Options Clearing Corporation (''OCC'') would need to amend its By-Laws after Cboe Options amended its Rules.[6] However, OCC did not submit proposed changes to its By-Laws until July 16, 2018, on which date those changes became effective.[7] Cboe Options understands that OCC does not intend to implement those changes as to Cboe Options until the implementation date Cboe Options announced for the proposed rule change in SR–CBOE–2018–008. Because Cboe Options was unable to determine an implementation date for the proposed changes until it knew the effective time of OCC's By-Law amendments, Cboe Options was unable to announce an implementation date until after OCC amended its By-Laws (and thus not until after July 16, 2018). On July 20, 2018, after the OCC By-Law amendment was filed, Cboe Options announced an implementation date of August 21, 2018, which was more than 30 days after the notice to Trading Permit Holders.[8] Because this implementation date is past July 31, 2018, the Exchange proposes to extend the implementation date of the rule changes in SR–CBOE–2018–008 to August 21, 2018.

Historically, Cboe Options would have announced this information pursuant to a Regulatory Circular as required by the rule text. However, Cboe Options announced the implementation date pursuant to an Exchange Notice in accordance with new company practice.[9] This is merely a change in the name of the document issued to market participants to announce this information. The substance of the announcement in the Exchange Notice was the same as it would have been if announced in a Regulatory Circular. Exchange Notices are distributed to the same group of market participants to which Regulatory Circulars were distributed before this change in company practice. Additionally, Exchange Notices are posted to Cboe Options' website, just as Regulatory Circulars are posted. As a result, the Exchange believes announcement of the implementation date by Exchange Notice provided market participants with sufficient notice of the proposed rule change in SR–CBOE–2018–008. The Exchange plans to issue a reminder of the implementation date to market participants by Regulatory Circular.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[10] Specifically, the Exchange believes the proposed rule change is consistent with the Section

[5] Securities Exchange Act Release No. 83205 (May 9, 2018), 83 FR 22550 (May 15, 2018) (SR–CBOE–2018–008).

[6] *See id.*

[7] Securities Exchange Act Release No. 83724 (July 27, 2018), 83 FR 37875 (August 2, 2018) (SR–OCC–2018–010).

[8] Exchange Notice C2018072002 announcing the implementation date of rule change SR–CBOE–2018–008 is available at: *http://cdn.batstrading.com/resources/release_notes/2018/Exchange-Notice-on-Open-Interest-Consolidation-for-Quarterly-and-Short-term-FLEX-products.pdf,* which can be accessed through the *markets.cboe.com* website. Cboe Options previously informed market participants of its change in company practice to announce information such as the proposed rule change in SR–CBOE–2018–008 by Exchange Notice rather than Regulatory Circular: *https://www.cboe.com/publish/RegCir/RG17-191.pdf.*

[9] *Id.*

[10] 15 U.S.C. 78f(b).

6(b)(5) [11] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [12] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed rule change is merely delaying the implementation date of a proposed rule change, the rule filing for which addressed why that change and the need for at least 30 days' notice of implementation of that change was consistent with the Act and was previously approved by the Commission. This will ensure market participants receive sufficient notice of the implementation date of the proposed rule change.

B. Self-Regulatory Organization's Statement on Burden on Competition

Cboe Options does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is merely delaying the implementation date of a proposed rule change, the rule filing for which addressed any potential competitive impact that change and the need for at least 30 days' notice of implementation of that change may have and was previously approved by the Commission. The proposed delay to the implementation date ensures market participants receive sufficient notice of the implementation date of the proposed rule change, which ultimately protects investors. The Exchange believes the proposed delay to the implementation date will have no impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

[11] 15 U.S.C. 78f(b)(5).

[12] *Id.*

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(6) thereunder.[14]

A proposed rule change filed under Rule 19b–4(f)(6) [15] normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[16] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Commission is waiving the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because such waiver will allow the rule change to be implemented as detailed in the Exchange Notice whereas keeping the 30-day operative delay in place could create confusion. Therefore, the Commission designates the proposal operative upon filing.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of 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.

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires Cboe Options to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. Cboe Options has satisfied this requirement.

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–CBOE–2018–059 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–CBOE–2018–059. 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–CBOE–2018–059 and should be submitted on or before September 19, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–18675 Filed 8–28–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–10538; 34–83935/August 24, 2018]

Order Making Fiscal Year 2019 Annual Adjustments to Registration Fee Rates

I. Background

The Commission collects fees under various provisions of the securities laws. Section 6(b) of the Securities Act of 1933 (''Securities Act'') requires the Commission to collect fees from issuers on the registration of securities.[1] Section 13(e) of the Securities Exchange Act of 1934 (''Exchange Act'') requires the Commission to collect fees on specified repurchases of securities.[2] Section 14(g) of the Exchange Act requires the Commission to collect fees on specified proxy solicitations and statements in corporate control transactions.[3] These provisions require the Commission to make annual adjustments to the applicable fee rates.

II. Fiscal Year 2019 Annual Adjustment to Fee Rates

Section 6(b)(2) of the Securities Act requires the Commission to make an annual adjustment to the fee rate applicable under Section 6(b).[4] The annual adjustment to the fee rate under Section 6(b) of the Securities Act also sets the annual adjustment to the fee rates under Sections 13(e) and 14(g) of the Exchange Act.[5]

Section 6(b)(2) sets forth the method for determining the annual adjustment to the fee rate under Section 6(b) for fiscal year 2019. Specifically, the Commission must adjust the fee rate under Section 6(b) to a ''rate that, when applied to the baseline estimate of the aggregate maximum offering prices for [fiscal year 2019], is reasonably likely to produce aggregate fee collections under [Section 6(b)] that are equal to the target fee collection amount for [fiscal year 2019].'' That is, the adjusted rate is determined by dividing the ''target fee collection amount'' for fiscal year 2019 by the ''baseline estimate of the aggregate maximum offering prices'' for fiscal year 2019.

Section 6(b)(6)(A) specifies that the ''target fee collection amount'' for fiscal year 2019 is $660,000,000. Section 6(b)(6)(B) defines the ''baseline estimate of the aggregate maximum offering prices'' for fiscal year 2019 as ''the baseline estimate of the aggregate maximum offering price at which securities are proposed to be offered pursuant to registration statements filed with the Commission during [fiscal year 2019] as determined by the Commission, after consultation with the Congressional Budget Office and the Office of Management and Budget . . . .''

To make the baseline estimate of the aggregate maximum offering price for fiscal year 2019, the Commission is using a methodology that has been used in prior fiscal years and that was developed in consultation with the Congressional Budget Office and Office of Management and Budget.[6] Using this methodology, the Commission determines the ''baseline estimate of the aggregate maximum offering price'' for fiscal year 2019 to be $5,447,649,888,566. Based on this estimate, the Commission calculates the fee rate for fiscal 2019 to be $121.20 per million. This adjusted fee rate applies to Section 6(b) of the Securities Act, as well as to Sections 13(e) and 14(g) of the Exchange Act.

III. Effective Dates of the Annual Adjustments

The fiscal year 2019 annual adjustments to the fee rates applicable under Section 6(b) of the Securities Act and Sections 13(e) and 14(g) of the Exchange Act will be effective on October 1, 2018.[7]

IV. Conclusion

Accordingly, pursuant to Section 6(b) of the Securities Act and Sections 13(e) and 14(g) of the Exchange Act,[8]

It is hereby ordered that the fee rates applicable under Section 6(b) of the Securities Act and Sections 13(e) and 14(g) of the Exchange Act shall be $121.20 per million effective on October 1, 2018.

By the Commission.

Brent J. Fields,

Secretary.

Appendix A

Congress has established a target amount of monies to be collected from fees charged to issuers based on the value of their registrations. This appendix provides the formula for determining such fees, which the Commission adjusts annually. Congress has mandated that the Commission determine these fees based on the ''aggregate maximum offering prices,'' which measures the aggregate dollar amount of securities registered with the Commission over the course of the year. In order to maximize the likelihood that the amount of monies targeted by Congress will be collected, the fee rate must be set to reflect projected aggregate maximum offering prices. As a percentage, the fee rate equals the ratio of the target amounts of monies to the projected aggregate maximum offering prices.

For 2019, the Commission has estimated the aggregate maximum offering prices by projecting forward the trend established in the previous decade. More specifically, an ARIMA model was used to forecast the value of the aggregate maximum offering prices for months subsequent to July 2018, the last month for which the Commission has data on the aggregate maximum offering prices.

The following sections describe this process in detail.

A. Baseline estimate of the aggregate maximum offering prices for fiscal year 2019.

First, calculate the aggregate maximum offering prices (AMOP) for each month in the sample (July 2008–July 2018). Next, calculate the percentage change in the AMOP from month to month.

Model the monthly percentage change in AMOP as a first order moving average process. The moving average approach allows one to model the effect that an exceptionally high (or low) observation of AMOP tends to be followed by a more ''typical'' value of AMOP.

Use the estimated moving average model to forecast the monthly percent change in AMOP. These percent changes can then be applied to obtain forecasts of the total dollar value of registrations. The following is a more formal (mathematical) description of the procedure:

1. Begin with the monthly data for AMOP. The sample spans ten years, from July 2008 to July 2018.

2. Divide each month's AMOP (column C) by the number of trading days in that month (column B) to obtain the average daily AMOP (AAMOP, column D).

3. For each month t, the natural logarithm of AAMOP is reported in column E.

4. Calculate the change in log(AAMOP) from the previous month as $\Delta_t = \log$

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 77f(b).

[2] 15 U.S.C. 78m(e).

[3] 15 U.S.C. 78n(g).

[4] 15 U.S.C. 77f(b)(2). The annual adjustments are designed to adjust the fee rate in a given fiscal year so that, when applied to the aggregate maximum offering price at which securities are proposed to be offered for the fiscal year, it is reasonably likely to produce total fee collections under Section 6(b) equal to the ''target fee collection amount'' specified in Section 6(b)(6)(A) for that fiscal year.

[5] 15 U.S.C. 78m(e)(4) and 15 U.S.C. 78n(g)(4).

[6] Appendix A explains how we determined the ''baseline estimate of the aggregate maximum offering price'' for fiscal year 2019 using our methodology, and then shows the arithmetical process of calculating the fiscal year 2019 annual adjustment based on that estimate. The appendix includes the data used by the Commission in making its ''baseline estimate of the aggregate maximum offering price'' for fiscal year 2019.

[7] 15 U.S.C. 77f(b)(4), 15 U.S.C. 78m(e)(6) and 15 U.S.C. 78n(g)(6).

[8] 15 U.S.C. 77f(b), 78m(e) and 78n(g).

$(AAMOP_t) - \log(AAMOP_{t-1})$. This approximates the percentage change.

5. Estimate the first order moving average model $\Delta_t = \alpha + \beta e_{t-1} + e_t$, where e_t denotes the forecast error for month t. The forecast error is simply the difference between the one-month ahead forecast and the actual realization of Δ_t. The forecast error is expressed as $e_t = \Delta_t - \alpha - \beta e_{t-1}$. The model can be estimated using standard commercially available software. Using least squares, the estimated parameter values are $\alpha = 0.00446718$ and $\beta = 0.94291195$.

6. For the month of August 2018 forecast $\Delta_{t=8/2017} = \alpha + \beta e_{t=7/2017}$. For all subsequent months, forecast $\Delta_t = \alpha$.

7. Calculate forecasts of log(AAMOP). For example, the forecast of log(AAMOP) for October 2018 is given by $FLAAMOP_{t=10/2018} = \log(AAMOP_{t=7/2018}) + \Delta_{t=8/2018} + \Delta_{t=9/2018} + \Delta_{t=10/2018}$.

8. Under the assumption that e_t is normally distributed, the n-step ahead forecast of AAMOP is given by $\exp(FLAAMOP_t + \sigma_n^2/2)$, where σ_n denotes the standard error of the n-step ahead forecast.

9. For October 2018, this gives a forecast AAMOP of $21.070 billion (Column I), and a forecast AMOP of $484.618 billion (Column J).

10. Iterate this process through September 2019 to obtain a baseline estimate of the aggregate maximum offering prices for fiscal year 2019 of $5,447,649,888,566.

B. Using the Forecasts From A To Calculate the New Fee Rate

1. Using the data from Table A, estimate the aggregate maximum offering prices between 10/01/18 and 9/30/19 to be $5,447,649,888,566.

2. The rate necessary to collect the target $660,000,000 in fee revenues set by Congress is then calculated as: $660,000,000 ÷ $5,447,649,888,566 = 0.000121153.

3. Round the result to the seventh decimal point, yielding a rate of 0.0001212 (or $121.20 per million).

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Table A. Estimation of baseline of aggregate maximum offering prices.

Fee rate calculation.

a. Baseline estimate of the aggregate maximum offering prices, 10/01/18 to 09/30/19 ($Millions)	5,447,650
b. Implied fee rate ($660 Million / a)	$121.20

(A) Month	(B) # of Trading Days in Month	(C) Aggregate Maximum Offering Prices, in $Millions	(D) Average Daily Aggregate Max. Offering Prices (AAMOP) in $Millions	(E) log(AAMOP)	(F) Log (Change in AAMOP)	(G) Forecast log(AAMOP)	(H) Standard Error	(I) Forecast AAMOP, in $Millions	(J) Forecast Aggregate Maximum Offering Prices, in $Millions
Jul-08	22	232,896	10,586	23.083					
Aug-08	21	395,440	18,830	23.659	0.576				
Sep-08	21	177,636	8,459	22.858	-0.800				
Oct-08	23	360,494	15,674	23.475	0.617				
Nov-08	19	288,911	15,206	23.445	-0.030				
Dec-08	22	319,584	14,527	23.399	-0.046				
Jan-09	20	375,065	18,753	23.655	0.255				
Feb-09	19	249,666	13,140	23.299	-0.356				
Mar-09	22	739,931	33,633	24.239	0.940				
Apr-09	21	235,914	11,234	23.142	-1.097				
May-09	20	329,522	16,476	23.525	0.383				
Jun-09	22	357,524	16,251	23.511	-0.014				
Jul-09	22	185,187	8,418	22.854	-0.658				
Aug-09	21	192,726	9,177	22.940	0.086				
Sep-09	21	189,224	9,011	22.922	-0.018				
Oct-09	22	215,720	9,805	23.006	0.085				
Nov-09	20	248,353	12,418	23.242	0.236				
Dec-09	22	340,464	15,476	23.463	0.220				
Jan-10	19	173,235	9,118	22.933	-0.529				
Feb-10	19	209,963	11,051	23.126	0.192				
Mar-10	23	432,934	18,823	23.658	0.533				
Apr-10	21	280,188	13,342	23.314	-0.344				
May-10	20	278,611	13,931	23.357	0.043				
Jun-10	22	364,251	16,557	23.530	0.173				
Jul-10	21	171,191	8,152	22.822	-0.709				
Aug-10	22	240,793	10,945	23.116	0.295				
Sep-10	21	260,783	12,418	23.242	0.126				
Oct-10	21	214,988	10,238	23.049	-0.193				
Nov-10	21	340,112	16,196	23.508	0.459				
Dec-10	22	297,992	13,545	23.329	-0.179				

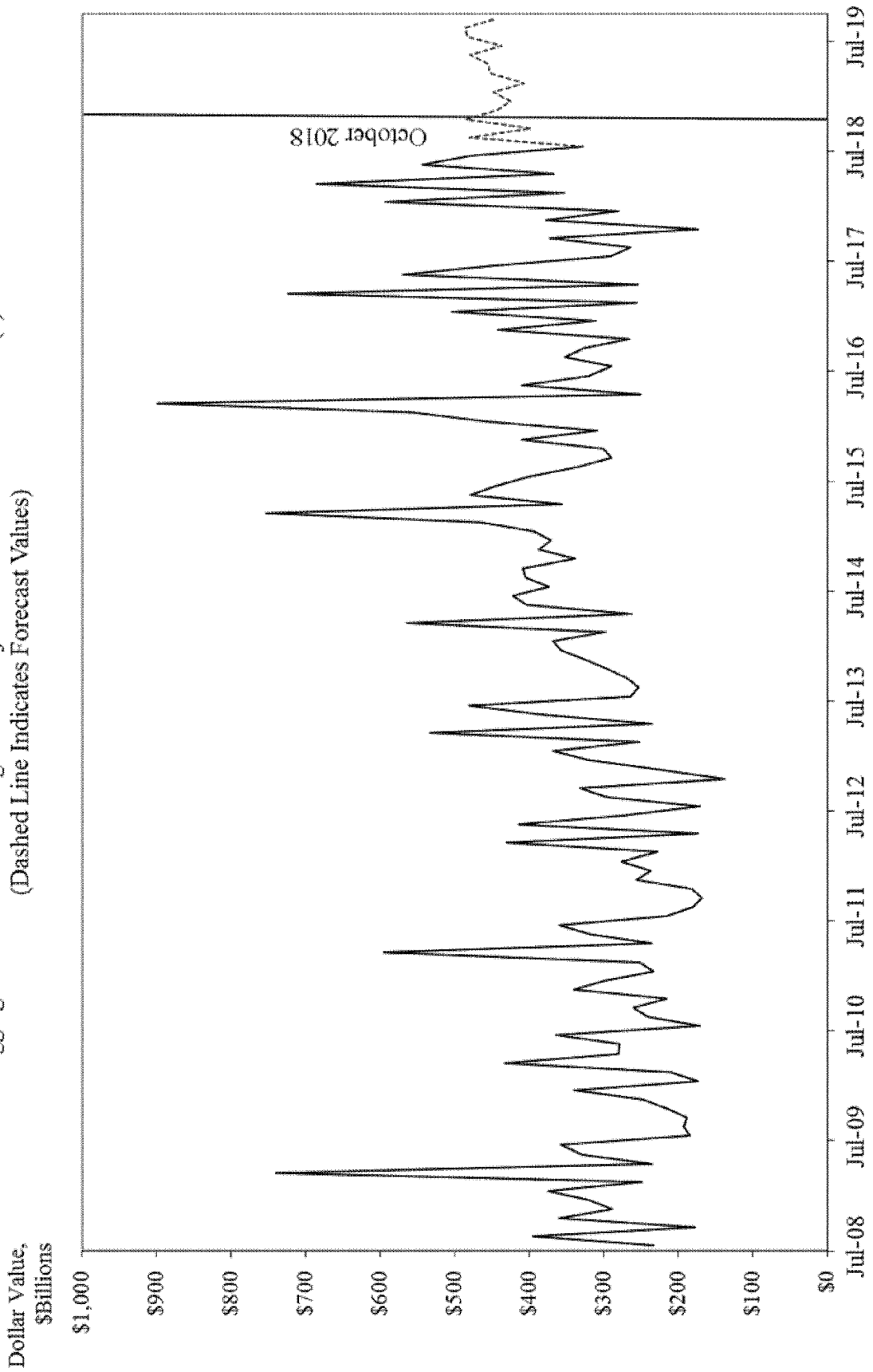
(A) Month	(B) # of Trading Days in Month	(C) Aggregate Maximum Offering Prices, in $Millions	(D) Average Daily Aggregate Max. Offering Prices (AAMOP) in $Millions	(E) log(AAMOP)	(F) Log (Change in AAMOP)	(G) Forecast log(AAMOP)	(H) Standard Error	(I) Forecast AAMOP, in $Millions	(J) Forecast Aggregate Maximum Offering Prices, in $Millions
Jan-11	20	233,668	11,683	23.181	-0.148				
Feb-11	19	252,785	13,304	23.311	0.130				
Mar-11	23	595,198	25,878	23.977	0.665				
Apr-11	20	236,355	11,818	23.193	-0.784				
May-11	21	319,053	15,193	23.444	0.251				
Jun-11	22	359,727	16,351	23.518	0.073				
Jul-11	20	215,391	10,770	23.100	-0.418				
Aug-11	23	179,870	7,820	22.780	-0.320				
Sep-11	21	168,005	8,000	22.803	0.023				
Oct-11	21	181,452	8,641	22.880	0.077				
Nov-11	21	256,418	12,210	23.226	0.346				
Dec-11	21	237,652	11,317	23.150	-0.076				
Jan-12	20	276,965	13,848	23.351	0.202				
Feb-12	20	228,419	11,421	23.159	-0.193				
Mar-12	22	430,806	19,582	23.698	0.539				
Apr-12	20	173,626	8,681	22.884	-0.813				
May-12	22	414,122	18,824	23.658	0.774				
Jun-12	21	272,218	12,963	23.285	-0.373				
Jul-12	21	170,462	8,117	22.817	-0.468				
Aug-12	23	295,472	12,847	23.276	0.459				
Sep-12	19	331,295	17,437	23.582	0.305				
Oct-12	21	137,562	6,551	22.603	-0.979				
Nov-12	21	221,521	10,549	23.079	0.476				
Dec-12	20	321,602	16,080	23.501	0.422				
Jan-13	21	368,488	17,547	23.588	0.087				
Feb-13	19	252,148	13,271	23.309	-0.279				
Mar-13	20	533,440	26,672	24.007	0.698				
Apr-13	22	235,779	10,717	23.095	-0.912				
May-13	22	382,950	17,407	23.580	0.485				
Jun-13	20	480,624	24,031	23.903	0.322				

(A) Month	(B) # of Trading Days in Month	(C) Aggregate Maximum Offering Prices, in $Millions	(D) Average Daily Aggregate Max. Offering Prices (AAMOP) in $Millions	(E) log(AAMOP)	(F) Log (Change in AAMOP)	(G) Forecast log(AAMOP)	(H) Standard Error	(I) Forecast AAMOP, in $Millions	(J) Forecast Aggregate Maximum Offering Prices, in $Millions
Jul-13	22	263,869	11,994	23.208	-0.695				
Aug-13	22	253,305	11,514	23.167	-0.041				
Sep-13	20	267,923	13,396	23.318	0.151				
Oct-13	23	293,847	12,776	23.271	-0.047				
Nov-13	20	326,257	16,313	23.515	0.244				
Dec-13	21	358,169	17,056	23.560	0.045				
Jan-14	21	369,067	17,575	23.590	0.030				
Feb-14	19	298,376	15,704	23.477	-0.113				
Mar-14	21	564,840	26,897	24.015	0.538				
Apr-14	21	263,401	12,543	23.252	-0.763				
May-14	21	403,700	19,224	23.679	0.427				
Jun-14	21	423,075	20,146	23.726	0.047				
Jul-14	22	373,811	16,991	23.556	-0.170				
Aug-14	21	405,017	19,287	23.683	0.127				
Sep-14	21	409,349	19,493	23.693	0.011				
Oct-14	23	338,832	14,732	23.413	-0.280				
Nov-14	19	386,898	20,363	23.737	0.324				
Dec-14	22	370,760	16,853	23.548	-0.189				
Jan-15	20	394,127	19,706	23.704	0.156				
Feb-15	19	466,138	24,534	23.923	0.219				
Mar-15	22	753,747	34,261	24.257	0.334				
Apr-15	21	356,560	16,979	23.555	-0.702				
May-15	20	478,591	23,930	23.898	0.343				
Jun-15	22	446,102	20,277	23.733	-0.166				
Jul-15	22	402,062	18,276	23.629	-0.104				
Aug-15	21	334,746	15,940	23.492	-0.137				
Sep-15	21	289,672	13,803	23.348	-0.144				
Oct-15	22	300,276	13,649	23.337	-0.011				
Nov-15	20	409,690	20,485	23.743	0.406				
Dec-15	22	308,569	14,026	23.364	-0.379				

(A) Month	(B) # of Trading Days in Month	(C) Aggregate Maximum Offering Prices, in $Millions	(D) Average Daily Aggregate Max. Offering Prices (AAMOP) in $Millions	(E) log(AAMOP)	(F) Log (Change in AAMOP)	(G) Forecast log(AAMOP)	(H) Standard Error	(I) Forecast AAMOP, in $Millions	(J) Forecast Aggregate Maximum Offering Prices, in $Millions
Jan-16	19	457,411	24,074	23.904	0.540				
Feb-16	20	554,343	27,717	24.045	0.141				
Mar-16	22	900,301	40,923	24.435	0.390				
Apr-16	21	250,716	11,939	23.203	-1.232				
May-16	21	409,992	19,523	23.695	0.492				
Jun-16	22	321,219	14,601	23.404	-0.291				
Jul-16	20	289,671	14,484	23.396	-0.008				
Aug-16	23	352,068	15,307	23.452	0.055				
Sep-16	21	326,116	15,529	23.466	0.014				
Oct-16	21	266,115	12,672	23.263	-0.203				
Nov-16	21	443,034	21,097	23.772	0.510				
Dec-16	21	310,614	14,791	23.417	-0.355				
Jan-17	20	503,030	25,152	23.948	0.531				
Feb-17	19	255,815	13,464	23.323	-0.625				
Mar-17	23	723,870	31,473	24.172	0.849				
Apr-17	19	255,275	13,436	23.321	-0.851				
May-17	22	569,965	25,908	23.978	0.657				
Jun-17	22	445,081	20,231	23.730	-0.247				
Jul-17	20	291,167	14,558	23.401	-0.329				
Aug-17	23	263,981	11,477	23.164	-0.238				
Sep-17	20	372,705	18,635	23.648	0.485				
Oct-17	22	173,749	7,898	22.790	-0.858				
Nov-17	21	377,262	17,965	23.612	0.822				
Dec-17	20	281,126	14,056	23.366	-0.245				
Jan-18	21	593,025	28,239	24.064	0.698				
Feb-18	19	353,182	18,589	23.646	-0.418				
Mar-18	21	685,784	32,656	24.209	0.563				
Apr-18	21	367,569	17,503	23.586	-0.624				
May-18	22	543,840	24,720	23.931	0.345				
Jun-18	21	477,967	22,760	23.848	-0.083				

(A) Month	(B) # of Trading Days in Month	(C) Aggregate Maximum Offering Prices, in $Millions	(D) Average Daily Aggregate Max. Offering Prices (AAMOP) in $Millions	(E) log(AAMOP)	(F) Log (Change in AAMOP)	(G) Forecast log(AAMOP)	(H) Standard Error	(I) Forecast AAMOP, in $Millions	(J) Forecast Aggregate Maximum Offering Prices, in $Millions
Jul-18	21	327,710	15,605	23.471	-0.377				
Aug-18	23					23.706	0.334	20,875	480,133
Sep-18	19					23.711	0.334	20,973	398,480
Oct-18	23					23.715	0.335	21,070	484,618
Nov-18	21					23.719	0.336	21,169	444,539
Dec-18	20					23.724	0.336	21,267	425,343
Jan-19	21					23.728	0.337	21,366	448,691
Feb-19	19					23.733	0.337	21,466	407,851
Mar-19	21					23.737	0.338	21,566	452,883
Apr-19	21					23.742	0.338	21,666	454,993
May-19	22					23.746	0.339	21,767	478,880
Jun-19	20					23.751	0.339	21,869	437,374
Jul-19	22					23.755	0.340	21,971	483,354
Aug-19	22					23.760	0.340	22,073	485,606
Sep-19	20					23.764	0.341	22,176	443,517

Figure A
Aggregate Maximum Offering Prices Subject to Securities Act Section 6(b)
(Dashed Line Indicates Forecast Values)



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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83928; File No. SR–OCC–2017–810]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of No Objection to Advance Notice, as Modified by Partial Amendment No. 3, Concerning Updates to and Formalization of OCC's Recovery and Orderly Wind-Down Plan

August 23, 2018.

I. Introduction

On December 8, 2017, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') advance notice SR–OCC–2017–810 (''Advance Notice'') pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled Payment, Clearing and Settlement Supervision Act of 2010 (''Clearing Supervision Act'') [1] and Rule 19b–4(n)(1)(i) [2] under the Securities Exchange Act of 1934 (''Exchange Act'') [3] to formalize and update its Recovery and Orderly Wind-Down Plan (''RWD Plan''). The Advance Notice was published for public comment in the **Federal Register** on January 23, 2018.[4] On January 23, 2018, the Commission requested that OCC provide it with additional information regarding the Advance Notice.[5] OCC responded to the request, and the Commission received the information on July 13, 2018.[6]

On July 11, 2018, OCC filed Partial Amendment No. 1 to the Advance Notice.[7] On July 12, 2018, OCC filed Partial Amendment No. 2 and Partial Amendment No. 3 to the Advance Notice.[8] Notice of the Amendments to the Advance Notice was published for public comment in the **Federal Register** on August 7, 2018,[9] and the Commission has received no comments in response.

This publication serves as notice that the Commission does not object to the changes set forth in the Advance Notice, as amended by Partial Amendment No. 3 (''Amended Advance Notice'').

II. Background [10]

OCC's proposal would formalize and update its RWD Plan. The purpose of the RWD Plan is to: (i) Demonstrate that OCC has considered the scenarios which may potentially prevent it from being able to provide the services OCC determined to be critical as a going-concern; (ii) provide appropriate plans for OCC's recovery or orderly wind-down based on the results of such consideration; and (iii) impart to relevant authorities the information reasonably anticipated to be necessary for purposes of recovery and orderly wind-down planning.

The RWD Plan would identify the services provided by OCC that OCC has determined to be critical, and it would set forth five qualitative events that could trigger a recovery scenario and six qualitative events that could trigger an orderly wind-down. It would also address six scenarios that describe OCC's possible responses to series of stresses. The RWD Plan would also include an overview designed to provide information that OCC believes would be essential to relevant authorities for purposes of recovery and orderly wind-down planning, as well as to provide readers of the Plan with necessary context for subsequent discussion and analysis. The overview would also include a detailed description of OCC's business, summarizing the role OCC has in the options market as well as the services and products it provides to its clearing members and market participants. The RWD Plan would identify fourteen internal support functions at OCC and provide a brief description of the activities performed by each support function. Similar to the information regarding OCC's business, this information is designed to inform the relevant authorities for orderly wind-down planning and as necessary context for understanding other elements of the RWD Plan.

A. Designating Critical Services and Critical Support Functions

The RWD Plan would define the terms ''Critical Services'' and ''Critical Support Functions.'' Specifically, a Critical Service would be a service provided by OCC that, if interrupted, would likely have a material negative impact on participants or significant third parties, give rise to contagion, or undermine the general confidence of markets that OCC serves. A Critical Support Function would be a function within OCC that must continue in some capacity for OCC to be able to continue providing its Critical Services.

The RWD Plan would describe the framework that OCC uses to determine whether a service is critical. This framework includes four criteria to determine if failure or discontinuation of a particular service would impact financial and operational capabilities of OCC's clearing members, other FMUs, or the broader financial system: (1) Market dominance, (2) substitutability, (3) interconnectedness, and (4) barriers to entry. The current set of services designated as Critical Services under the RWD Plan is based on the analysis of these measureable indicators and subsequent internal discussion at OCC. The Critical Services currently include, but are not limited to, clearance services for listed options and clearance services for futures.

B. Recovery Plan

The RWD Plan would include plans for recovery from scenarios that could prevent OCC from providing Critical Services.[11] After discussing particular

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[1] 12 U.S.C. 5465(e)(1).

[2] 17 CFR 240.19b–4(n)(1)(i).

[3] 15 U.S.C. 78a *et seq.*

[4] *See* Exchange Act Release No. 82514 (January 17, 2018), 83 FR 3224 (January 23, 2018) (SR–OCC–2017–810) (hereinafter referred to as the ''Notice of Filing''). On December 18, 2017, OCC also filed a related proposed rule change (SR–OCC–2017–020) with the Commission pursuant to Section 19(b)(1) of the Exchange Act and Rule 19b–4 thereunder, seeking approval of changes to its rules necessary to implement the Advance Notice (''Proposed Rule Change''). 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4, respectively. The Proposed Rule Change was published in the **Federal Register** on December 26, 2017. Exchange Act Release No. 82352 (Dec. 19, 2017), 82 FR 61072 (Dec. 26, 2017) (SR–OCC–2017–021).

[5] *See* Memorandum from Office of Clearance and Settlement, Division of Trading and Markets, dated January 23, 2018, available at *https://www.sec.gov/rules/sro/occ-an/2018/34-83305.pdf.*

[6] *See* Memorandum from Office of Clearance and Settlement, Division of Trading and Markets, dated July 17, 2018, available at *https://www.sec.gov/comments/sr-occ-2017-810/occ2017810-4062513-169149.pdf.*

[7] In Amendment No. 1, OCC made three modifications to the Notice of Filing: (1) Removal of sections of the RWD Plan concerning OCC's proposed authority to require cash settlement of certain physically delivered options and single stock futures; (2) updating the list of OCC's Critical Support Functions; and (3) making three changes to the RWD Plan to conform to a change contemporaneously proposed in Amendment No. 2 to OCC filing SR–OCC–2017–809 concerning enhanced and new tools for recovery scenarios.

[8] Partial Amendment No. 2 superseded and replaced Partial Amendment No. 1 in its entirety, due to technical defects in Partial Amendment No. 1. Partial Amendment No. 3 then superseded and replaced Partial Amendment No. 1 in its entirety, due to technical defects in Partial Amendment No. 2.

[9] *See* Exchange Act Release No. 83762 (Aug. 1, 2018), 83 FR 38750 (Aug. 7, 2018) (''Notice of Amendment'').

[10] Capitalized terms used but not defined herein have the meanings specified in OCC's Rules and By-Laws, available at *https://www.theocc.com/about/publications/bylaws.jsp.*

[11] For the purposes of the RWD Plan, OCC defines ''recovery'' as ''the actions of [a financial market utility], consistent with its rules, procedures, and other ex-ante contractual arrangements, to address any uncovered credit loss, liquidity shortfall, capital inadequacy, or business, operational or other structural weakness, including the replenishment of any depleted pre-funded financial resources and liquidity arrangements, as necessary to maintain the [financial market utility's] viability as a going concern.''

scenarios, the RWD Plan identifies the tools that OCC could use as warranted in such scenarios. These tools fall into two categories: (1) Enhanced Risk Management Tools, and (2) Recovery Tools. An Enhanced Risk Management Tool is a tool that is designed to supplement OCC's existing processes and other existing tools in scenarios where OCC faces heightened stresses, while a Recovery Tool is a tool that is generally limited to a scenario in which a specific trigger has occurred. In its RWD Plan, OCC would define a set of five such qualitative trigger events (''Recovery Trigger Events'').

The sequence and timing of the deployment of each Recovery Tool is more structured and lacks the flexibility inherent in the sequence and timing for use of the Enhanced Risk Management Tools. For each tool, the RWD Plan provides an overview of the tool, and, as appropriate, a discussion of its implementation with an estimated time frame for use of the tool, key risks associated with use of the tool, and the expected impact and incentives of using the tool.

1. Enhanced Risk Management Tools

OCC stated that the Enhanced Risk Management Tools would be used prophylactically in an effort to prevent the occurrence of a Recovery Trigger Event and would not be limited to recovery. OCC would not anticipate applying a rigid order or timing for the deployment of the Enhanced Risk Management Tools. The RWD Plan would include five Enhanced Risk Management Tools: (1) Use of Current/Retained Earnings; (2) Minimum Clearing Fund Cash Contribution; (3) Borrowing Against Clearing Fund; (4) Credit Facility; and (5) Non-Bank Facility.

Use of Current/Retained Earnings. Under its By-Laws, OCC may use current and/or retained earnings to discharge a loss that would be chargeable against the Clearing Fund, but would require unanimous consent from the holders of OCC's Class A and Class B common stock. The RWD Plan acknowledges that the utility of this tool is limited by the requirement for shareholder consent and that OCC's retained earnings presently amount to a small fraction of OCC's existing prefunded Clearing Fund resources. OCC stated that, given this amount, the maximum utility of this tool may be realized in specific circumstances at either the beginning of OCC's loss waterfall or toward the end of OCC's loss waterfall, where it would be sufficient to fully extinguish liabilities without triggering the use of another tool.

Minimum Clearing Fund Cash Contribution. Under its current rules, OCC Clearing Members collectively contribute $3 billion in cash to OCC's Clearing Fund.[12] In addition, OCC may, in certain limited circumstances, increase the minimum cash requirement up to the then-minimum size of the Clearing Fund.[13] The RWD Plan would acknowledge that increasing the minimum cash requirement would require preparation of OCC documentation that considers the projected liquidity demands for successful management of a defaulted Clearing Member.

Borrowing Against Clearing Fund. OCC has the authority to borrow against the Clearing Fund in three circumstances: (1) To meet obligations arising out of the default or suspension of a Clearing Member or any action taken by OCC under Chapter XI of its rules pertaining to the suspension of a clearing member; (2) to borrow or otherwise obtain funds from third parties in lieu of immediately charging the Clearing Fund for a loss that is reimbursable out of the Clearing Fund; and (3) to meet liquidity needs for same-day settlement as a result of the failure of any bank or securities or commodities clearing organization to achieve daily settlement.[14] The RWD Plan would acknowledge that any borrowing would require preparation of OCC documentation in accordance with OCC procedures. Further, the RWD Plan would recognize that the availability of this tool in advance of a heightened stress scenario would be unknown because OCC's primary liquidity facilities could already be fully or partially utilized.

Credit Facility and Non-Bank Liquidity Facility. OCC maintains a $2 billion dollar senior secured 364-day revolving credit facility with a syndicate of lenders for the purpose of providing OCC with liquidity to meet settlement obligations as a central counterparty. The RWD Plan would recognize that an inherent risk of the credit facility is that a portion of the syndicate may not provide funds in timely response to OCC's request. OCC also maintains a $1 billion dollar secured non-bank liquidity facility for the purpose of providing OCC with a non-bank liquidity resource to meet settlement obligations as a central counterparty. Similar to the risk associated with the credit facility, the RWD Plan would recognize the risk that OCC's counterparty may not timely execute the transaction under the non-bank liquidity facility.

2. Recovery Tools

Under the RWD Plan, Recovery Tools would be different from Enhanced Risk Management Tools because OCC's use of a Recovery Tool is generally limited to a scenario in which a Recovery Trigger has occurred. The RWD Plan would identify five Recovery Tools, the last four of which would generally be deployed in the order they are described here: (1) Replenishment Capital; (2) Assessment Powers; (3) Voluntary Payments; (4) Voluntary Tear-Up; and (5) Partial Tear-Up.[15] As noted above, the sequence and timing of deployment of the Recovery Tools would be more structured than the sequence and timing of the use of Enhanced Risk Management Tools.

Replenishment Capital. OCC holds capital contributed by its stockholder exchanges who have committed to replenish OCC's capital if it falls below a certain threshold.[16] The RWD Plan would include the replenishment of capital by OCC's stockholder exchanges as a recovery tool.

Assessment Powers. Under OCC's rules, OCC has authority to assess a non-defaulting Clearing Member during any cooling-off period for an amount equal to 200 percent of the Clearing Member's then-required contribution to the Clearing Fund.[17] Following the end of

[12] *See* OCC By-Laws, Art. VIII, Section 3(a)(i). The Commission recently approved a proposal by OCC that, after implementation, would move this section of the OCC By-Laws to OCC Rule 1002(a)(i). *See* Exchange Act Release No. 83735 (Jul. 27, 2018), 83 FR 37855, 37859 (Aug. 2, 2018) (SR–OCC–2018–008) (''Order Approving Proposed Rule Change, as Modified by Amendments No. 1 and 2, Related to OCC's Stress Testing and Clearing Fund Methodology'').

[13] *See* OCC By-Laws, Art. VIII, Section 3(a)(i).

[14] *See* OCC By-Laws, Art. VIII, Section 5(e). The Commission recently approved a proposal by OCC that, after implementation, would move this section of the OCC By-Laws to OCC Rule 1006(f). *See* Order Approving Proposed Rule Change Related to OCC Stress Testing and Clearing Fund Methodology, *supra* note 12, 83 FR at 37859.

[15] For a more detailed description of the Recovery Tools numbered (2) through (5) here, please see Exchange Act Release No. 83927 (Aug. 23, 2018).

[16] The requirement to replenish OCC's capital was adopted as part of OCC's plan to raise and maintain capital at a specified level (''Capital Plan''). *See* Exchange Act Release No. 77112 (February 11, 2016), 81 FR 8294 (February 18, 2016) (SR–OCC–2015–02). The Capital Plan was later subject to judicial review by the U.S. Court of Appeals for the District of Columbia Circuit, which remanded for the Commission to further analyze whether the Capital Plan is consistent with the Exchange Act. *Susquehanna Int'l Grp., LLP* v. *SEC*, 866 F.3d 442 (D.C. Cir. 2017). The Commission's review of the Capital Plan on remand is ongoing, and the Capital Plan remains in effect during this ongoing review.

[17] The cooling-off period is the period following a proportionate charge assessed by OCC against the Clearing Members' Clearing Fund contributions. It

the cooling-off period, each remaining Clearing Member must replenish the Clearing Fund in the amount necessary to meet its then-required contribution.[18] The RWD Plan would recognize the risk that the use of assessment powers may incentivize Clearing Members to withdraw from membership in OCC to avoid replenishment, and that such withdrawals would limit the resources available to OCC for future assessments.

Voluntary Payments. OCC's rules provide a framework by which OCC can receive voluntary payments in response to a Clearing Member default. Use of this tool is permissible only where OCC has determined that it may not have sufficient resources to satisfy its obligations and liabilities arising out of the default. The RWD Plan would describe the processes involved in calling for and receiving voluntary payments, including the issuance of a notice to Clearing Members. The RWD Plan would recognize the risk that Clearing Members would be unwilling or unable to make voluntary payments. As an incentive for Clearing Members to provide voluntary payments, a non-defaulting Clearing Member who made a voluntary payment would receive priority in reimbursement from amounts recovered by OCC from the estate of a defaulting Clearing Member.

Voluntary Tear-up. OCC's rules provide a framework by which non-defaulting Clearing Members and customers could be permitted to voluntarily extinguish (*i.e.,* voluntarily tear-up) open positions in response to a Clearing Member default. Voluntary Tear-up is permissible only where OCC has determined that it may not have sufficient resources to satisfy its obligations and liabilities arising out of the default. The RWD Plan would contemplate that OCC would initiate any tear-up process after the market close on the day that OCC determines it may have insufficient resources. The RWD Plan would further anticipate that OCC would publish notice of tear-up no later than the following morning (prior to the market open), and that positions would be extinguished following the market close. The RWD Plan would also recognize the risk that Clearing Members would be unwilling or unable to participate in the voluntary tear-up process. A non-defaulting Clearing Member that faced losses, costs, or expenses in reestablishing voluntarily torn-up positions could receive compensation from amounts recovered by OCC from the estate of a defaulting Clearing Member ahead of other Clearing Members that faced such losses, costs, or expenses after reestablishing torn up positions.

Partial Tear-up. OCC's rules provide a framework by which OCC could extinguish the remaining open positions of a defaulted Clearing Member or its customers (*i.e.,* Partial Tear-up) in response to a Clearing Member default. The RWD Plan would anticipate that the Partial Tear-up process would be intertwined with the Voluntary Tear-up process described above. The RWD Plan also would contemplate the compensation of Clearing Members facing losses, costs, or expenses after reestablishing torn up positions from Clearing Fund contributions.

The RWD Plan also would provide a mapping of Enhanced Risk Management Tools and Recovery Tools to different types of risk exposures. Such risk exposures include: (1) Uncovered credit losses; (2) liquidity shortfalls; (3) replenishment of financial resource; (4) losses related to business, operational, or other structural weaknesses; and (5) re-establishment of a matched book. The RWD Plan discusses how each tool would apply to these risk categories and would reference the stress scenarios contemplated by the RWD Plan.

The RWD Plan would outline an escalation process for the occurrence of each Recovery Trigger.[19] Under the RWD Plan, OCC's Enterprise Risk Management and Financial Risk Management groups would be responsible for recommending which, if any, of the tools described above should be used in a given situation. Further, OCC's Chief Executive Officer and Executive Chairman would be responsible for approval of such recommendations, and OCC's Chief Risk Officer and Management Committee would be responsible for overseeing deployment of such tools. Finally, OCC's Board and the Risk Committee of the Board would be responsible for generally overseeing OCC's recovery efforts.

C. Orderly Wind-Down Plan

The RWD Plan would also include OCC's wind-down plan and include scenarios that could prevent OCC from being able to provide Critical Services as a going-concern. OCC would identify its wind-down objective as the pursuit of financial stability and ensuring the continuity of critical functions. The RWD Plan would provide OCC's assumptions concerning the wind-down process regarding: (1) Duration of wind-down; (2) cost of wind-down; (3) OCC's capitalization; and (4) the maintenance of Critical Services and Critical Support Functions. It also would identify six wind-down triggers (''WDP Trigger Events''), the occurrence of which could jeopardize the viability of OCC's recovery. Under the RWD Plan, the occurrence of a WDP Trigger Event would necessitate notification of regulators, including the Commission, the U.S. Commodity Futures Trading Commission, and the Federal Deposit Insurance Corporation, as well as internal notifications to OCC senior management.

The RWD Plan would reference critical interconnections and key agreements for consideration in the context of wind-down. The RWD Plan also would discuss OCC's key actions in wind-down including the: (1) Decision by OCC's Board to initiate wind-down; (2) institution of heightened clearing member requirements; (3) imposition of heightened capital requirements for clearing members; (4) imposition of increased margin requirements; (5) cessation of investment by OCC; (6) institution of new operational practices; and (7) targeted reductions in force.

The RWD Plan also would identify transactions that could be entered into to accomplish OCC's wind-down objectives: (1) Stock transactions; (2) merger transactions; and (3) asset transactions. The RWD Plan focuses discussion of wind-down transactions on issues including, but not limited to, governance and regulatory issues. The goal of any such transaction would be to transfer ownership of OCC in a manner that ensures the continuation of OCC's critical services; however, the RWD Plan also would contemplate the cessation of Critical Services through OCC's existing close-out netting rules.[20]

D. Governance

The RWD Plan would also memorialize the governance processes for maintenance, review, and approval of the RWD Plan. Under the RWD Plan, all changes would originate in a recommendation from OCC's RWD Working Group. Changes would go through a series of consecutive rounds of review and approval by OCC's Management Committee, the Risk Committee of OCC's Board of Directors, and the full Board of Directors, which would have final approval authority.

is a minimum of fifteen days, but could extend to as much as twenty days from the date of the proportionate charge based on intervening events.

[18] A Clearing Member may avoid liability for replenishment by terminating its membership in OCC prior to the end of the cooling-off period.

[19] The RWD Plan also would discuss notification of regulators, including the Commission, the U.S. Commodity Futures Trading Commission, and the Federal Deposit Insurance Corporation, in response to the occurrence of a Recovery Trigger.

[20] *See also* OCC By-Laws, Art. VI, Section 27.

III. Discussion and Commission Findings

Although the Clearing Supervision Act does not specify a standard of review for an advance notice, the stated purpose of the Clearing Supervision Act is instructive: To mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for systemically important financial market utilities (''SIFMUs'') and strengthening the liquidity of SIFMUs.[21]

Section 805(a)(2) of the Clearing Supervision Act [22] authorizes the Commission to prescribe regulations containing risk-management standards for the payment, clearing, and settlement activities of designated clearing entities engaged in designated activities for which the Commission is the supervisory agency. Section 805(b) of the Clearing Supervision Act [23] provides the following objectives and principles for the Commission's risk-management standards prescribed under Section 805(a):

- To promote robust risk management;
- to promote safety and soundness;
- to reduce systemic risks; and
- to support the stability of the broader financial system.

Section 805(c) provides, in addition, that the Commission's risk-management standards may address such areas as risk-management and default policies and procedures, among others areas.[24]

The Commission has adopted risk-management standards under Section 805(a)(2) of the Clearing Supervision Act and Section 17A of the Exchange Act (the ''Clearing Agency Rules'').[25] The Clearing Agency Rules require, among other things, each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for its operations and risk-management practices on an ongoing basis.[26] As such, it is appropriate for the Commission to review advance notices against the objectives and principles of these risk management standards as described in Section 805(b) of the Clearing Supervision Act and the Clearing Agency Rules.[27] As discussed below, the Commission believes the proposal in the Amended Advance Notice is consistent with the objectives and principles described in Section 805(b) of the Clearing Supervision Act,[28] and in the Clearing Agency Rules, in particular Rules 17Ad–22(e)(2)(i), (iii), and (v), 17Ad–22(e)(3)(ii), and 17Ad–22(e)(15)(i) under the Exchange Act.[29]

A. Consistency With Section 805(b) of the Clearing Supervision Act

The Commission believes that the proposal contained in OCC's Amended Advance Notice is consistent with the stated objectives and principles of Section 805(b) of the Clearing Supervision Act. Specifically, as discussed below, the Commission believes that the changes proposed in the Amended Advance Notice are consistent with promoting robust risk management, promoting safety and soundness, reducing system risks, and supporting the stability of the broader financial system.[30]

First, the Commission believes that the proposed changes are consistent with reducing systemic risks and supporting the stability of the broader financial system. OCC is the sole registered clearing agency for the U.S. listed options markets and a SIFMU. By specifying the steps that OCC would take in either a recovery or an orderly wind-down, the Commission believes that the proposed changes would enhance OCC's ability to address circumstances specific to an extreme stress event, thereby increasing the likelihood that it could execute a successful recovery or orderly wind-down in such an event. As such, the Commission believes that the RWD Plan would help reduce systemic risk by decreasing the likelihood of a disorderly or unsuccessful recovery or wind-down, which could otherwise disrupt the markets for which OCC clears, thereby leading to the transmission of risk across market participants. For the same reason, the Commission also believes the RWD Plan would support the stability of the broader financial system.

Second, the RWD Plan would, as described above, specify the Enhanced Risk Management Tools and Recovery Tools available to OCC in recovery, as well as the governance framework applicable to the use of such tools. It would analyze the use of the Enhanced Risk Management Tools and Recovery Tools, the incentives created by such tools, and the risks associated with using such tools. The Commission believes that by specifying the tools that OCC would use to address, or preferably prevent, a recovery scenario, the RWD Plan would increase the likelihood that recovery would be orderly, efficient, and successful. By doing so, the Commission believes that the RWD Plan would enhance OCC's ability to maintain the continuity of its critical services (including clearance and settlement services) during, through, and following periods of extreme stress giving rise to the need for recovery, thereby promoting both robust risk management and safety and soundness in the clearance and settlement in the listed-options and futures markets.

Similarly, the Commission believes that the RWD Plan would enhance OCC's ability to promote robust risk management and safety and soundness by establishing a plan to effectuate an orderly wind-down. The RWD Plan's governance processes and regulatory notice provisions could facilitate either the orderly transfer of OCC's Critical Services to another entity or the orderly close-out of positions. Providing additional information regarding the potential orderly transfer of services or close-out of positions would benefit Clearing Members and their customers by providing greater transparency and certainty regarding the potential disposition or treatment of their positions and assets at OCC, thereby benefiting market participants more broadly. Therefore, the Commission believes that these provisions would enhance OCC's ability to promote robust risk management and safety and soundness in the clearance and settlement of the listed-options and futures markets by assuring that transactions are transferred to another entity or closed out in an orderly and transparent manner.

Accordingly, and for the reasons stated, the Commission believes the changes proposed in the Amended Advance Notice are consistent with Section 805(b) of the Clearing Supervision Act.[31]

B. Consistency With Rules 17Ad–22(e)(2)(i), (iii), and (v) Under the Exchange Act

Rules 17Ad–22(e)(2)(i), (iii), and (v) require that OCC establish, implement,

[21] *See* 12 U.S.C. 5461(b).

[22] 12 U.S.C. 5464(a)(2).

[23] 12 U.S.C. 5464(b).

[24] 12 U.S.C. 5464(c).

[25] 17 CFR 240.17Ad–22. *See* Securities Exchange Act Release No. 68080 (October 22, 2012), 77 FR 66220 (November 2, 2012) (S7–08–11). *See also* Securities Exchange Act Release No. 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (S7–03–14) (''Covered Clearing Agency Standards''). The Commission established an effective date of December 12, 2016, and a compliance date of April 11, 2017, for the Covered Clearing Agency Standards. OCC is a ''covered clearing agency'' as defined in Rule 17Ad–22(a)(5).

[26] 17 CFR 240.17Ad–22.

[27] 12 U.S.C. 5464(b) and 17 CFR 240.17Ad–22.

[28] 12 U.S.C. 5464(b).

[29] 17 CFR 240.17Ad–22(e)(2)(i), (iii), and (v); (e)(3)(ii); (e)(15)(i).

[30] 12 U.S.C. 5464(b).

[31] 12 U.S.C. 5464(b).

maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent, that support the public interest requirements in Section 17A of the Exchange Act applicable to clearing agencies, and the objectives of owners and participants, and that specify clear and direct lines of responsibility.[32]

The RWD Plan would outline an escalation process for the occurrence of a Recovery Trigger Event, which would provide a governance framework for the use and functioning of the Enhanced Risk Management Tools and Recovery Tools in addition to those specified elsewhere in OCC's rules. It would also identify the internal notification requirements that would apply to WDP Trigger Events and establish the role of the Board in determining whether to enter into a wind-down or take other key actions, consistent with the governance specified elsewhere in OCC's rules.

Moreover, the RWD Plan would identify the internal governance process for the approval of subsequent changes to OCC's RWD Plan. The RWD Plan would also specify the process OCC would take to receive input from various parties at OCC, including management and the Board.

Taken together, the Commission believes that these lines of control could contribute to establishing, implementing, maintain and enforcing clear and transparent governance arrangements that support the public interest requirements in Section 17A of the Exchange Act applicable to clearing agencies, and the objectives of owners and participants.

Therefore, the Commission believes that the proposed changes are consistent with Rules 17Ad–22(e)(2)(i), (iii), and (v).[33]

C. Consistency With Rule 17Ad–22(e)(3)(ii) Under the Exchange Act

Rule 17Ad–22(e)(3)(ii) requires that OCC establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by OCC, which includes plans for the recovery and orderly wind-down of OCC necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.[34]

The Commission believes that the information the RWD Plan would provide about the OCC's recovery tools would enhance OCC's ability to recover from credit losses, liquidity shortfalls, general business risk losses, or other losses, consistent with Rule 17Ad–22(e)(3)(ii).[35] Specifically, the information from the RWD Plan would enable OCC to prepare in advance for the use of such tools, which would in turn enhance OCC's ability to use such tools effectively to carry out a successful recovery. In addition, by establishing a single source of information about, and steps needed to effectuate, a recovery of OCC, the RWD Plan would allow OCC personnel to effectuate a recovery in a consistent and coordinated fashion, and would thereby increase the likelihood of a successful recovery. Moreover, by identifying and assessing available Enhanced Risk Management Tools and Recovery Tools, the Commission believes that the RWD Plan would enhance OCC's ability to use such tools effectively to bring about a recovery by identifying in advance which tools may be most effective for different situations or needs, consistent with Rule 17Ad–22(e)(3)(ii).[36]

Similarly, in providing detailed information about the assumptions, actions, and objectives related to triggering and implementing the wind-down portion of the RWD Plan, discussed in more detail above, the Commission believes that the RWD Plan would enhance OCC's ability to effectuate an orderly wind-down, consistent with Rule 17Ad–22(e)(3)(ii).[37] Specifically, by setting out in advance the potential events that could cause OCC to trigger, and transactions by which OCC would effectuate, a wind-down, the RWD Plan would enable OCC to prepare in advance for a wind-down, which the Commission believes would enhance OCC's ability to use the RWD Plan effectively to carry-out an orderly wind-down. In addition, by establishing a single source of information about, and steps needed to effectuate, a wind-down of OCC, the Commission believes the RWD Plan would allow OCC personnel to effectuate a wind-down in a consistent and coordinated fashion, and would thereby increase the likelihood of an orderly wind-down. Finally, the RWD Plan would identify the legal basis for OCC's actions with respect to a potential wind-down, including relevant citations to provisions of the rule books of its various clearing services and contractual agreements, which the Commission believes would further facilitate an orderly wind-down process by providing OCC with a single source of information and steps needed for a wind-down, consistent with Rule 17Ad–22(e)(3)(ii).[38]

Therefore, the Commission believes that the proposed changes to adopt plans for the orderly recovery and wind down of OCC are consistent with Rule 17Ad–22(e)(3)(ii).[39]

D. Consistency With Rules 17Ad–22(e)(15)(i) Under the Exchange Act

Rule 17Ad–22(e)(15)(i) requires OCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage its general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses so that OCC can continue operations and services as a going concern if those losses materialize, including by determining the amount of liquid net assets funded by equity based upon its general business risk profile and the length of time required to achieve a recovery or orderly wind-down, as appropriate, of its critical operations and services if such action is taken.[40]

OCC's RWD Plan would estimate costs related to a wind-down based on a series of assumptions laid out in the RWD Plan. These assumptions include duration of the wind-down process, OCC's capitalization through the wind-down process, the maintenance of Critical Services and Critical Support Functions, and the retention of personnel and contractual relationships. OCC also provided information regarding its assumption about the cost of the wind-down process. Further, the RWD Plan identifies potential transactions that could be effected to accomplish the objectives of wind-down with the ultimate goal of transferring ownership of OCC itself by the consummation or a consensual sale or similar transaction, in a manner that ensures the continuation of OCC's Critical Services. The Commission considered the assumptions that the RWD Plan makes regarding wind-down as well as the potential transactions in which OCC might engage in the event of a wind-down. The Commission also considered the estimated cost of wind-down noted in the RWD Plan in light of OCC's rules regarding the maintenance of certain capital levels and qualifying liquid resources. The Commission

[32] 17 CFR 240.17Ad–22(e)(2)(i), (iii), and (v).
[33] 17 CFR 240.17Ad–22(e)(2)(i), (iii), and (v).
[34] 17 CFR 240.17Ad–22(e)(3)(ii).
[35] *Id.*
[36] *Id.*
[37] *Id.*
[38] *Id.*
[39] *Id.*
[40] 17 CFR 240.17Ad–22(e)(15)(i).

believes that the RWD Plan, which indicates the cost at which OCC could effectuate an orderly wind-down, *i.e.,* at a lower cost than the amount of its liquid resources is consistent with Rule 17Ad–22(e)(15)(i).[41]

Therefore, the Commission believes that the proposed changes that would determine costs associated with an orderly wind-down and that would further ensure that OCC holds liquid net assets greater than these costs, are consistent with Rule 17Ad–22(e)(15)(i).[42]

IV. Conclusion

It is therefore noticed, pursuant to Section 806(e)(1)(I) of the Clearing Supervision Act,[43] that the Commission does not object to Advance Notice (SR–OCC–2017–810), as modified by Partial Amendment No. 3, and that OCC is authorized to implement the proposed change as of the date of this notice or the date of an order by the Commission approving proposed rule change SR–OCC–2017–021, as modified by Partial Amendment No. 3, whichever is later.

By the Commission.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–18656 Filed 8–28–18; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83926; File No. SR–CboeBZX–2018–060]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending the Fee Schedule To Eliminate Fee Code IX on Cboe BZX Exchange, Inc.

August 23, 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 9, 2018, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') 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 Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the Exchange's fee schedule applicable to its equities trading platform to eliminate fee code IX, which applies to orders routed to Investors Exchange LLC using the Exchange's TRIM or TRIM2 routing strategies.

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 purpose of the proposed rule change is to amend the Exchange's fee schedule applicable to its equities trading platform (''BZX Equities'') to eliminate fee code IX,[5] which applies to orders routed to Investors Exchange LLC (''IEX'') using the Exchange's TRIM or TRIM2 [6] routing strategies. Currently, the fee schedule provides that orders routed to IEX using the TRIM or TRIM2 routing strategies are charged a fee of $0.0010 per share under fee code IX. In May 2018, the Exchange removed IEX from the System routing table for its TRIM and TRIM2 routing strategies,[7] which are designed to route to low cost away markets, due to increased costs associated with routing to IEX. Since IEX is no longer considered as a potential routing destination for those strategies, the Exchange proposes to eliminate fee code IX. Orders routed to IEX using other routing strategies will not be impacted by this proposed rule change and will continue to be charged the same rates as in place today.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(5) of the Act[9] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed change to eliminate fee code IX is consistent with the public interest and the protection [sic] investors as this is a non-substantive change being made because the Exchange no longer routes to IEX using the routing strategies specified in that fee code. The Exchange had previously routed orders to IEX using the TRIM and TRIM2 order routing strategies, which are designed to route to low cost venues, but recently stopped doing so due to increased routing costs associated with trading on IEX. As such, the Exchange believes that updating the fee schedule to reflect that these two routing strategies are not available for routing to IEX will increase transparency around the operation of the Exchange to the benefit of Members and investors. Because the proposed changes apply only to a fee code that is no longer in use on the Exchange, the proposed rule change will have no impact on the transaction fees actually assessed to Members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not

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[41] 17 CFR 240.17Ad–22(e)(15)(i).

[42] 17 CFR 240.17Ad–22(e)(15)(i).

[43] 12 U.S.C. 5465(e)(1)(I).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] IX is associated with order [sic] routed to IEX using TRIM or TRIM2 routing strategy.

[6] TRIM and TRIM2 are both routing options under which an order checks the System for available shares and then is sent to destinations on the applicable System routing table. *See* Rule 11.13(b)(3)(G).

[7] The term ''System routing table'' refers to the proprietary process for determining the specific trading venues to which the System routes orders and the order in which it routes them. *See* Rule 11.13(b)(3). Rule 11.13(b)(3) permits the Exchange to maintain a different System routing table for different routing options and to modify the System routing table at any time without notice.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

necessary or appropriate in furtherance of the purposes of the Act, as amended. The proposed rule change eliminates a fee code that is no longer in use by the Exchange due to the fact that IEX is no longer an eligible destination for the TRIM and TRIM2 routing strategies. As the proposed rule change only makes a non-substantive change to retire a fee code that is not currently in use, the Exchange believes that it will not cause any significant 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 either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [12] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [13] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately upon filing. The Exchange notes that waiver of the operative delay would allow it to immediately remove an outdated fee code from its fee schedule, the elimination of which would ensure that the fee schedule properly reflects the routing strategies currently available for routing to IEX. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change is designed to increase transparency around the operation of the Exchange and the routing strategies that it provides. Accordingly, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[14]

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 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 proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2018–060 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–CboeBZX–2018–060. 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 will also 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–CboeBZX–2018–060 and should be submitted on or before September 19, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–18677 Filed 8–28–18; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 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, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] 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).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83929; File No. SR–NYSE–2018–37]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend its Price List

August 23, 2018.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on August 10, 2018, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Price List to (1) amend the cap applicable to certain transactions at the

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

open; (2) add new incentives for member organizations and Supplemental Liquidity Providers (''SLP'') in Tape A securities when adding liquidity in securities traded pursuant to Unlisted Trading Privileges (''UTP'') (Tapes B and C); (3) add a new Step Up tier for SLPs in Tape A securities; and (4) amend the alternative NYSE Crossing Session II (''NYSE CSII'') fee cap. The Exchange proposes to implement these changes to its Price List effective August 10, 2018.[4] The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List to (1) amend the cap applicable to certain transactions at the open; (2) add new incentives for member organizations and SLPs in Tape A securities when adding liquidity in UTP Securities (Tapes B and C); (3) add a new Step Up tier for SLPs in Tape A securities; and (4) amend the alternative NYSE CSII fee cap. In general, the proposed amendments are intended to encourage greater participation by Exchange member organizations and encourage submission of additional liquidity to a national securities exchange, to the benefit of all market participants.

The Exchange proposes to implement these changes to its Price List effective August 10, 2018.

Executions at the Open

For securities priced $1.00 or more, the Exchange currently charges fees of $0.0010 per share for executions at open, and $0.0003 per share for Floor broker executions at the open, subject to $30,000 cap per month per member organization, provided the member organization executes an average daily trading volume (''ADV'') that adds liquidity to the Exchange during the billing month (''Adding ADV''),[5] excluding liquidity added by a DMM, of at least five million shares, unless the lower $20,000 monthly fee cap applies. The lower fee cap applies to member organizations that execute an ADV that takes liquidity from the NYSE during the billing month (''Taking ADV''), excluding liquidity taken by a DMM, of at least 1.30% of NYSE consolidated average daily volume (''CADV'') and an ADV of orders for execution at the open (''Open ADV'') of at least 8 million shares.

The Exchange proposes to lower the alternative fee cap from $20,000 to $10,000. The Exchange would also require member organizations to execute a Taking ADV, excluding liquidity taken by a DMM, of at least 1.20% of NYSE CADV in order to qualify for the lower cap. The additional requirement of an Open ADV of at least 8 million shares would remain unchanged.

New Cross Tape Incentive

The Exchange proposes an additional incentive to member organizations and SLPs in Tape A securities that add liquidity to the Exchange in UTP Securities, as follows.

As proposed, member organizations that meet the current requirements for the Tier 1 Adding Credit or Tier 2 Adding Credit on Tape A would be eligible to receive an additional $0.00005 per share in Tape A securities if the member organization adds liquidity, excluding liquidity added as an SLP, in UTP Securities of at least 0.20% of Tape B and Tape C CADV combined.

Similarly, SLPs that (1) meet the current requirements for the SLP Tier 1 or Tier 4 credits or the proposed requirements for the SLP Step Up Tier credits described below, and (2) add liquidity in UTP Securities of at least 0.30% of Tape B and Tape C CADV combined, would be eligible for an additional $0.00005 per share in Tape A securities for SLPs that meet the requirements for SLP Tier 1 and Tier 4 credits or an additional $0.0001 in Tape A securities for SLPs that meet the requirements for SLP Step Up Tier in securities with a per share price of $1.00 or more that meet the 10% average or more quoting requirement in an assigned security pursuant to Rule 107B (quotes of an SLP-Prop and an SLMM of the same member organization would not be aggregated).[6]

SLPs that meet the current requirements for SLP Tier 1 and add liquidity in UTP Securities of at least 0.30% of Tape B and Tape C CADV combined would receive an additional credit of $0.00005 per share in Tape A securities for adding liquidity in securities, other than MPL and Non-Display Reserve orders, where they are not assigned as an SLP or in securities where they do not meet the 10% average or more quoting requirement in an assigned security pursuant to Rule 107B. For example, assume an SLP meets the requirements of SLP Tier 1 and adds liquidity in UTP Securities of at least 0.30% of Tape B and Tape C CADV combined. Further assume that the SLP averages an Adding ADV of 28 million shares a day in Tape A securities, with 20 million shares ADV in securities that meet the 10% quoting requirement and 8 million shares ADV in securities below the 10% requirement. Also assume that the SLP adds an additional 10 million shares ADV in Tape A securities as a non-SLP. Under these facts, the SLP would receive an $0.00005 credit for all 28 million Adding ADV shares as an SLP as well as the 10 million Adding ADV shares as a non-SLP.

New SLP Step Up Tier

The Exchange proposes a new, sixth SLP Tier designated the ''SLP Step Up Tier'' that would provide that an SLP, when adding liquidity to the NYSE with orders, other than MPL orders, in securities with a per share price of $1.00 or more, would receive a credit of $0.0018, or $0.0001 if a Non-Displayed Reserve Order, if the SLP (1) meets the 10% average or more quoting requirement in an assigned security pursuant to Rule 107B (quotes of an SLP-Prop and an SLMM of the same

[4] The Exchange originally filed to amend the Price List on August 1, 2018 (SR–NYSE–2018–36) and withdrew such filing on August 10, 2018. This filing replaces SR–NYSE–2018–36 in its entirety.

[5] Footnote 2 to the Price List defines ADV as ''average daily volume'' and ''Adding ADV'' as ADV that adds liquidity to the Exchange during the billing month. The Exchange is not proposing to change these definitions.

[6] Under Rule 107B, an SLP can be either a proprietary trading unit of a member organization (''SLP-Prop'') or a registered market maker at the Exchange (''SLMM''). For purposes of the 10% average or more quoting requirement in assigned securities pursuant to Rule 107B, quotes of an SLP-Prop and an SLMM of the same member organization are not aggregated. However, for purposes of adding liquidity for assigned SLP securities in the aggregate, shares of both an SLP-Prop and an SLMM of the same member organization are included.

member organization would not be aggregated), and (2) adds liquidity for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same or an affiliated member organization) of an ADV of more than 0.085% of NYSE CADV over that SLPs' April 2018 adding liquidity for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same or an affiliated member organization) taken as a percentage of NYSE CADV. SLPs that are also DMMs and subject to Rule 107B(i)(2)(A) would need to add liquidity for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same or an affiliated member organization) of an ADV of more than 0.085% of NYSE CADV over that SLPs' April 2018 adding liquidity for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same or an affiliated member organization) taken as a percentage of NYSE CADV after a discount of the percentage for the prior quarter of NYSE CADV in DMM assigned securities as of the last business day of the prior month. The Exchange believes the new tier would provide greater incentives for more SLPs to add more liquidity to the Exchange.

NYSE CSII Fee Cap

Currently, the Exchange charges a fee of $0.0004 per share (both sides) for executions in NYSE CSII.[7] Fees for executions in CSII are capped at $200,000 per month per member organization unless the alternative, lower cap of $25,000 per month per member organization applies for member organizations that execute a Taking ADV, excluding liquidity taken by a DMM, of at least 1.30% of NYSE CADV and Open ADV of at least 8 million shares.

The Exchange proposes to lower the alternative cap to $15,000 per month for member organizations that execute a Taking ADV, excluding liquidity taken by a DMM, of at least 1.20% of NYSE CADV. The requirement for executing an Open ADV of at least 8 million shares would remain unchanged.[8]

* * * * *

[7] CSII runs on the Exchange from 4:00 p.m. to 6:30 p.m. Eastern Time and handles member organization crosses of baskets of securities of aggregate-priced buy and sell orders. *See* NYSE Rules 900–907.

[8] The Exchange also proposes non-substantive changes to delete and add a space on either side of footnote 8 at the end of the description of SLP Tier 1A.

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any problems that member organizations would have in complying with the proposed change.

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, 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.

Executions at the Open

The Exchange believes that lowering the alternative fee cap to $10,000 and lowering the requirement for member organizations to execute a Taking ADV, excluding liquidity taken by a DMM, to at least 1.20% of NYSE CADV in order to qualify for the lower cap for executions at the open is reasonable, equitable and not unfairly discriminatory because it would encourage additional liquidity on the Exchange and because members and member organizations benefit from the substantial amounts of liquidity that are present on the Exchange. The Exchange believes the proposed changes are equitable and not unfairly discriminatory because it would continue to encourage member organizations to send orders, thereby contributing to robust levels of liquidity, which benefits all market participants. The proposed changes will encourage the submission of additional liquidity to a national securities exchange, thereby promoting price discovery and transparency and enhancing order execution opportunities for member organizations from the substantial amounts of liquidity that are present on the Exchange. Moreover, the proposed changes are equitable and not unfairly discriminatory because they would apply equally to all qualifying member organizations, including Floor brokers, that submit orders to the NYSE opening and that remove liquidity from the Exchange.

New Cross Tape Incentive

The Exchange believes that providing an additional incentive in Tape A securities for member organizations that add liquidity in UTP Securities is reasonable because it would further contribute to incenting member organizations to provide additional liquidity to a public exchange in UTP Securities, thereby promoting price discovery and transparency and enhancing order execution opportunities for member organizations. The Exchange believes that that the proposal is reasonable and not unfairly discriminatory because it would apply to all member organizations eligible for the relevant Tape A tier credits equally. The Exchange further believes that extending the additional credit to Tier 1 Adding Credit and Tier 2 Adding Credit is reasonable because it would increase the number of member organizations at the higher tiers that could qualify for the proposed credit. The Exchange further believes that the proposed credit is reasonable and not unfairly discriminatory because, although the proposed additional credit is less than that offered for Non-Tier, Adding Tier 3 and Adding Tier 4, members organizations qualifying for Tier 1 Adding Credit and Tier 2 Adding Credit tiers already receive a higher credit for such executions. Similarly, the Exchange believes that extending the additional credit to SLP Tier 1 and SLP Tier 4 and the proposed SLP Step Up Tier is reasonable and not unfairly discriminatory because SLPs qualifying for SLP Tier 3, SLP Tier 2 and SLP Tier 1A would already receive a higher additional credit for such executions. The Exchange further believes that the proposed credit is reasonable and not unfairly discriminatory because, although the proposed additional credit for SLP Tier 1 and SLP Tier 4 is less than that offered for SLP Tier 3, SLP Tier 2, SLP Tier 1A and the proposed SLP Step Up Tier, SLPs qualifying for SLP Tier 1 and SLP Tier 4 already receive a higher credit for such executions. In addition, the Exchange believes that the additional credit of $0.00005 per share for SLPs that meet the current requirements for SLP Tier 1 and add liquidity in UTP Securities of at least 0.30% of Tape B and Tape C CADV combined for adding liquidity in securities where they are not assigned as an SLP or in securities where they do not meet the 10% average or more quoting requirement in an assigned security pursuant to Rule 107B is reasonable and not unfairly discriminatory because SLP Tier 1 has the highest Adding ADV requirement. Finally, the proposed cross tape incentives are equitable and not unfairly discriminatory because they would apply equally to all qualifying member organizations, including SLPs, that add

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4) & (5).

liquidity to the Exchange in Tape A, Tape B and Tape C securities and that qualify for SLP Tier 1, SLP Tier 4, Adding Tier 1, and Adding Tier 2.

New SLP Step Up Tier

The Exchange believes that the proposal to introduce a new SLP Step Up Tier is reasonable because it provides SLPs as well as SLPs that are also DMMs with an additional way to qualify for a rebate, thereby providing SLPs with greater flexibility and creating an added incentive for SLPs to bring additional order flow to a public market. In particular, as noted above, the Exchange believes that the new tier will provide greater incentives for more active SLPs to add liquidity to the Exchange, to the benefit of the investing public and all market participants. Moreover, offering a higher credit for SLPs that add liquidity for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same or an affiliated member organization) of an ADV of more than 0.085% of NYSE CADV over that SLPs' April 2018 adding liquidity and that meet the SLP quoting requirements would provide an incentive for less active SLPs to add liquidity in order to meet the SLP quoting requirements, thereby contributing to additional levels of liquidity to a public exchange, which benefits all market participants. Finally, the Exchange believes that the proposed tier is equitable and not unfairly discriminatory because it would apply equally to all SLPs that don't qualify for better SLP tiered credits and that would submit additional adding liquidity to the Exchange in order to qualify for the new credit.

NYSE CSII Fee Cap

The Exchange believes that lowering the alternative cap to $15,000 per month and the Taking ADV requirement to at least 1.20% of NYSE CADV is reasonable and an equitable allocation of fees because it would encourage the execution of additional liquidity on a public exchange, thereby promoting price discovery and transparency. Further, the Exchange believes that the proposed requirements are reasonable, equitable and not unfairly discriminatory because all member organizations that submit orders to the NYSE open, remove liquidity from the Exchange, and participate in CSII will be subject to the same fee structure and access to the Exchange's market would continue to be offered on fair and non-discriminatory terms. The Exchange further believes that the proposed lowering of the Taking ADV requirement would encourage additional member organizations to participate in CSII.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

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,[11] 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. Instead, the Exchange believes that the proposed change would foster liquidity provision and stability in the marketplace, thereby promoting price discovery and transparency and enhancing order execution opportunities for member organizations. In this regard, the Exchange believes that the transparency and competitiveness of attracting additional executions on an exchange market would encourage competition. The Exchange also believes that the proposed rule change is designed to provide the public and investors with a Price List that is clear and consistent, thereby reducing burdens on the marketplace and facilitating investor protection.

Finally, 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 or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. As a result of all of these considerations, the Exchange does not believe that the proposed changes will impair the ability of member organizations or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were 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 foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[12] of the Act and subparagraph (f)(2) of Rule 19b–4[13] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

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)[14] 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–NYSE–2018–37 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2018–37. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use

[11] 15 U.S.C. 78f(b)(8).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(2).

[14] 15 U.S.C. 78s(b)(2)(B).

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–NYSE–2018–37 and should be submitted on or before September 19, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–18678 Filed 8–28–18; 8:45 am]

BILLING CODE 8011–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2018–0037]

Rescission of Social Security Ruling 82–53: Titles II and XVI: Basic Disability Evaluation Guides

AGENCY: Social Security Administration.

ACTION: Notice of rescission of Social Security Ruling 82–53.

SUMMARY: The Acting Commissioner of Social Security gives notice of the rescission of Social Security Ruling (SSR) 82–53.

DATES: This rescission is applicable on August 29, 2018.

FOR FURTHER INFORMATION CONTACT: Dan O'Brien, Office of Vocational, Evaluation, and Process Policy in the Office of Disability Policy, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 597–1632. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–07708, or visit our internet site, Social Security Online, at *http://www.socialsecurity.gov*.

SUPPLEMENTARY INFORMATION: Although 5 U.S.C. 552(a)(1) and (a)(2) do not require us to publish this notice, we are doing so in accordance with 20 CFR 402.35(b)(1).

Through SSRs, we make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and special veterans benefits programs. We may base SSRs on determinations or decisions made at all levels of administrative adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of General Counsel, or other interpretations of the law and regulations.

We are rescinding SSR 82–53: ''Titles II and XVI: Basic Disability Evaluation Guides,'' because it is in part duplicative of other policy guidance and in part outdated.

SSR 82–53 provided an overview and an explanation of the definition and terms contained in the disability provisions of title II and title XVI of the Social Security Act (Act) and implementing regulations. The information in the SSR duplicates information available in the Act, regulations, and other sub-regulatory policy documents. For example, the definitions of ''disability'' and ''blindness'' already appear in the Act and in our regulations.

Additionally, some of the information in SSR 82–53 is outdated. For example, we no longer need to include language from expired State plans that excluded newly eligible Supplemental Security Income (SSI) recipients from State plans because those plans were rolled over as SSI benefits more than forty years ago. Another example is the elimination of the ''comparable severity'' disability standard for children's impairments, which was repealed under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.[1] The updated policies regarding children's benefits under title XVI are well documented in our regulations and sub-regulatory policy documents. Similarly, the Omnibus Budget Reconciliation Act of 1990 removed the special standard of ''engaging in gainful activity'' for determining disability for widows after 1991.[2] Therefore, we are rescinding SSR 82–53 as the information it contains duplicates information available in the Act, regulations, and other sub-regulatory policy documents and is outdated.

(Catalog of Federal Domestic Assistance, Programs Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security— Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006—Supplemental Security Income.)

Nancy A. Berryhill,

Acting Commissioner of Social Security.

[FR Doc. 2018–18739 Filed 8–28–18; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 10523]

Determination Under Section 7012 of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2018 Relating to Assistance to Somalia

Pursuant to section 7012 of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2018 (Div. K, Pub. L. 115–141) (the Act); Executive Order 12163, as amended by E.O. 13346; and Delegation of Authority No. 245–2, I hereby determine that assistance to Somalia is in the national interest of the United States and thereby waive, with respect to Somalia, the application of section 7012 of the Act.

This Determination shall be published in the **Federal Register** and, along with the accompanying Memorandum of Justification, shall be reported to Congress.

Dated: July 31, 2018.

John J. Sullivan,

Deputy Secretary of State.

[FR Doc. 2018–18754 Filed 8–28–18; 8:45 am]

BILLING CODE 4710–26–P

STATE JUSTICE INSTITUTE

SJI Board of Directors Meeting, Notice

AGENCY: State Justice Institute.

ACTION: Notice of meeting.

SUMMARY: The SJI Board of Directors will be meeting on Monday, September

[15] 17 CFR 200.30–3(a)(12).

[1] Section 211 of Public Law 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, amended section 1614(a)(3) of the Act to provide a definition of disability for children separate from that for adults.

[2] Section 5103 of Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990, amended section 223 of the Act to repeal the special definition of disability applicable in widows' claims and conformed the definition of disability for widows to that for all other title II claimants and title XVI adult claimants.

10, 2018 at 1:30 p.m. The meeting will be held at the Nebraska Supreme Court, State Capitol, Law Library Reading Room, 1445 K Street, Lincoln, Nebraska. The purpose of this meeting is to consider grant applications for the 4th quarter of FY 2018, and other business. All portions of this meeting are open to the public.

ADDRESSES: Nebraska Supreme Court, State Capitol, Law Library Reading Room, 1445 K Street, Lincoln, Nebraska, 68509.

FOR FURTHER INFORMATION CONTACT: Jonathan Mattiello, Executive Director, State Justice Institute, 11951 Freedom Drive, Suite 1020, Reston, VA 20190, 571–313–8843, *contact@sji.gov.*

Jonathan D. Mattiello,

Executive Director.

[FR Doc. 2018–18681 Filed 8–28–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at the Dallas/Fort Worth International Airport, DFW, Texas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request to release airport property.

SUMMARY: The FAA proposes to rule and invite public comment on the release of land at the Dallas/Fort Worth International Airport under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before (from 30 days of the posting of this **Federal Register** Notice).

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. Ben Guttery, Manager, Federal Aviation Administration, Southwest Region, Airports Division, Texas Airports District Office, ASW–650, 10101 Hillwood Parkway, Fort Worth, Texas 76177.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to the at the following address: Mr. Sean Donohue, Chief Executive Officer, Dallas/Fort Worth International Airport, Executive Office, P.O. Box 619428, DFW Airport, Texas 75261.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Cooks, Program Manager, Federal Aviation Administration, Texas Airports District Office, ASW–650, 10101 Hillwood Parkway, Fort Worth, TX 76177, Telephone: (817) 222–5608, email: *Steven.Cooks@faa.gov,* fax: (817) 222–5989.

The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the Dallas/Fort Worth International Airport under the provisions of the AIR 21.

The following is a brief overview of the request:

The Dallas/Fort Worth International Airport requests the release of 39.737 acres of non-aeronautical airport property for permanent easement to the Fort Worth Transportation Autority. The permanent and temporary easements to be released will enable TRA to construct the Interceptor line which is approximately 9,850 linear feet and continue to maintain the Interceptor in the future and revuenes shall be used to further develop, operate and maintain DFW Airport.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents relevant to the application in person at the: Dallas/Fort Worth International Airport, Telephone Number (972) 973–4646.

Issued in Fort Worth, Texas, on August 16, 2018.

Ignacio Flores,

Director, Airports Division.

[FR Doc. 2018–18764 Filed 8–28–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Rescinding the Notice of Intent for an Environmental Impact Statement; Gadsden, Etowah County, Alabama

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Rescind Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that the 2004 Notice of Intent (NOI) published in the **Federal Register** for Federal-aid project HPP–1602(539), the I–759 Extension, in Etowah County, Alabama is being rescinded. An environmental impact statement (EIS) will not be prepared for this project.

FOR FURTHER INFORMATION CONTACT: Mr. Mark D. Bartlett, Division Administrator, Federal Highway Administration, 9500 Wynlakes Place, Montgomery, Alabama 36117; Email: *mark.bartlett@dot.gov;* Telephone: (334) 274–6350.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Alabama Department of Transportation, is rescinding the NOI to prepare an EIS for Federal-aid project HPP–1602(539). The proposed project was to construct a limited access roadway from the eastern terminus of Interstate Highway 759 (I–759) near George Wallace Drive to a proposed interchange with U.S. Highway 431 and U.S. Highway 278 in the city of Gadsden. The proposed project would have been a multi-lane roadway on a new location.

The NOI for the project was published in the **Federal Register** on October 4, 2004. The FHWA has determined, in conjunction with ALDOT, the NOI for the project shall be rescinded due to the numerous impacts under Section 4(f) to historic resources identified during the project's environmental studies and opposition to Section 4(f) avoidance alternatives.

Any future Federal-aid actions within this corridor will comply with environmental review requirements of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321, *et seq.*), FHWA environmental regulations (23 CFR 771) and related authorities, as appropriate.

Authority: 23 U.S.C. 315; 49 CFR 1.48.

(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 20, 2018.

Mark Bartlett,

Division Administrator, Federal Highway Administration, Montgomery, Alabama.

[FR Doc. 2018–18669 Filed 8–28–18; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Rescinding the Notice of Intent for an Environmental Impact Statement; Multiple Counties, Alabama

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Rescind Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that the 2005 Notice of Intent (NOI) published in the

Federal Register for Federal-aid project NCPD–PE02(910), the I–85 Extension, in multiple counties in Alabama is being rescinded. A final environmental impact statement (EIS) will not be prepared for this project.

FOR FURTHER INFORMATION CONTACT: Mr. Mark D. Bartlett, Division Administrator, Federal Highway Administration, 9500 Wynlakes Place, Montgomery, Alabama 36117; Email: *mark.bartlett@dot.gov;* Telephone: (334) 274–6350.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Alabama Department of Transportation, is rescinding the NOI to prepare an EIS for Federal-aid project NCPD–PE02(910). The proposed project was to construct a multi-lane, limited access roadway to provide a connecting link in the freeway/Interstate system between Interstate 59/Interstate 20 (I–59/I–20) near the Mississippi state line and I–85 in Montgomery, Alabama. The study area included large parts of six Black Belt Counties (Dallas, Hale, Lowndes, Marengo, Perry, and Sumter), as well as Autauga and Montgomery Counties.

The NOI for the project was published in the **Federal Register** on September 20, 2005. A draft EIS was released in April 2010. The FHWA has determined, in conjunction with ALDOT, the NOI for the project shall be rescinded due to changes in economic projections and the lack of available funding. ALDOT has reassessed the needs and timing for the completion of this project and indefinitely postponed development.

Any future Federal-aid actions within this corridor will comply with environmental review requirements of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321, *et seq.*), FHWA environmental regulations (23 CFR 771) and related authorities, as appropriate.

Authority: 23 U.S.C. 315; 49 CFR 1.48.

(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 20, 2018.

Mark Bartlett,

Division Administrator, Federal Highway Administration, Montgomery, Alabama.

[FR Doc. 2018–18670 Filed 8–28–18; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Rescinding the Notice of Intent for an Environmental Impact Statement; Multiple Counties, Alabama

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Rescind Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that the 2006 Record of Decision (ROD) and the Final Environmental Impact Statements (FEISs) for Federal-aid projects DPS–A002(002) and DPS–A002(003), the Memphis to Atlanta transportation corridor, in multiple counties in Alabama is rescinded.

FOR FURTHER INFORMATION CONTACT: Mr. Mark D. Bartlett, Division Administrator, Federal Highway Administration, 9500 Wynlakes Place, Montgomery, Alabama 36117; Email: *mark.bartlett@dot.gov;* Telephone: (334) 274–6350.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Alabama Department of Transportation (ALDOT), is rescinding the ROD and FEISs for projects DPS–A002(002) and DPS–A002(003) [previously DPS–A002(001)]. The proposed projects were to construct a multi-lane, limited access roadway that would function as a major segment of the Memphis to Atlanta transportation corridor. The roadway would have proved a direct link between the two metropolitan areas. DPS–A002(002) contained the western portion of the corridor between interstate 65 (I–65) and the Mississippi state line and located in Colbert, Lawrence, Morgan and Limestone Counties. DPS–A002(003) contained the eastern portion of the corridor between I–65 and the Georgia state line and located in Cherokee, Dekalb, Marshall, Madison, and Limestone Counties.

The ROD for the projects was issued August 31, 2006. The FHWA has determined, in conjunction with ALDOT, the ROD and the FEIS for the projects shall be rescinded due to objections raised by Redstone Arsenal. The Arsenal objected to a public roadway passing through Arsenal property due to increased security concerns.

Any future Federal-aid actions within this corridor will comply with environmental review requirements of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321, *et seq.*), FHWA environmental regulations (23 CFR 771) and related authorities, as appropriate.

Authority: 23 U.S.C. 315; 49 CFR 1.48.

(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 20, 2018.

Mark Bartlett,

Division Administrator, Federal Highway Administration, Montgomery, Alabama.

[FR Doc. 2018–18668 Filed 8–28–18; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2010–0211]

RIN 2105–AE07

Notice of Submission of Proposed Information Collection to OMB Agency Request for Renewal of a Previously Approved Information Collection Request: Reports by Air Carriers on Incidents Involving Animals During Air Transport

AGENCY: Office of the Secretary (OST), Department of Transportation (Department or DOT).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), this notice announces that the request to renew the previously approved information collection request (ICR) OMB No. 2105–0552, ''Reports by Air Carriers on Incidents Involving Animals During Air Transport,'' has been forwarded to the Office of Management and Budget (OMB). The current ICR approved by OMB expires August 31, 2018. DOT published a **Federal Register** notice with a 60-day comment period soliciting comments on the collection of information on May 21, 2018.

DATES: Comments on this notice must be received by September 28, 2018.

ADDRESSES: You may submit comments (identified by Docket No. DOT–OST–2010–0211) through one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, West Building Ground Floor, 1200 New Jersey Avenue SE, Room W12–140, Washington, DC 20590,

between 9 a.m. and 5 p.m., Monday through Friday, except on Federal Holidays. The telephone number is 202–366–9329.

FOR FURTHER INFORMATION CONTACT: Vinh Q. Nguyen, Senior Trial Attorney, Office of the General Counsel, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC, 20590, 202–366–9342 (Voice), 202–366–7152 (Fax), or *vinh.nguyen@dot.gov* (Email).

SUPPLEMENTARY INFORMATION: The PRA and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. On May 21, 2018, the Department published a 60-day notice in the **Federal Register** [1] soliciting comment on the renewal of the previously approved ICR OMB No. 2105–0552, ''Reports by Air Carriers on Incidents Involving Animals During Air Transport.'' [2] The Department received two comments in response to the notice.

The Pet Industry Joint Advisory Council (PIJAC) states that the current reporting requirements should be retained and renewed. PIJAC explains that there are an increased number of people traveling with, or shipping, their pets. PIJAC states even though the number of incidents involving the loss, injury, or death of an animal is small, the publicity of such incidents is growing. PIJAC believes that transparency is the best method for confirming that incidents involving the loss, injury, or death of an animal are in fact extremely rare.

The American Veterinary Medical Association (AVMA) also supports the renewal of the ICR. AVMA states that the information collected and provided in the reports is vital for ongoing analysis of adverse events and effective identification of areas of focus for prevention of future incidents. AMVA states that public access to these reports is important for animal owners researching and deciding whether air travel is a responsible option for their animal, as well as for veterinarians whose clients often approach them for recommendations regarding transportation options. AVMA suggests expanding the reporting requirement to include the following information: incidents involving the loss, injury, or death of an animal transported within the cabin; standard names for dog breeds; results of internal investigations and necropsies; and additional details on the nature, extent, and conditions of the animal's travel. AVMA also suggests a number of ways the reporting burden could be minimized, such as a creating a simplified reporting interface with drop-down selections, allowing an option to import veterinary health certificate information, reducing the frequency of the reports from monthly to quarterly, and providing covered carriers an option to update records with pertinent information after the filing deadline.

We carefully considered all of the comments filed in response the notice requesting the renewal of the previously approved ICR OMB No. 2105–0552, ''Reports by Air Carriers on Incidents Involving Animals During Air Transport.'' Accordingly, the Department announces that this ICR has been re-evaluated and certified under 5 CFR 1320.5(a) and forwarded to OMB for review and approval pursuant to 5 CFR 1320.12(c).

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment.[3] Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published.[4] OMB believes that the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision.[5] Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure their full consideration. The summaries below describe the nature of the ICR and the expected burden. The unchanged requirements are being submitted for clearance by OMB as required by the PRA.

Title: Reports by Air Carriers on Incidents Involving Animals During Air Transport.

OMB Control Number: 2105–0552.

Type of Request: Renewal of currently approved Information Collection Request.

Background: The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century or ''AIR–21'' (Pub. L. 106–181), which was signed into law on April 5, 2000, includes section 710, ''Reports by Carriers on Incidents Involving Animals During Air Transport.'' This provision was codified as 49 U.S.C. 41721. The statute requires air carriers that provide scheduled passenger air transportation to submit monthly to the Secretary of Transportation a report on any incidents involving the loss, injury, or death of an animal (as defined by the Secretary of Transportation) during air transport provided by the air carrier.

On August 11, 2003, DOT, through its Federal Aviation Administration (FAA), issued a final rule implementing section 710 of AIR–21.[6] The rule required air carriers that provide scheduled passenger air transportation to submit a report to APHIS on any incident involving the loss, injury, or death of an animal during air transportation provided by the air carrier. Due to issues regarding whether APHIS had the capability to accept such information directly from the carriers, DOT made a technical change in the rule on February 14, 2005, to require air carriers to submit the required information directly to DOT's Aviation Consumer Protection Division (ACPD) rather than APHIS and to make the rule part of DOT's economic regulations.[7]

On July 3, 2014, DOT published a final rule amending the requirement that air carriers file reports with DOT on the loss, injury, or death of animals during air transport.[8] The rule (1) expanded the reporting requirement from the largest U.S. carriers (*i.e.,* U.S. carriers that account for at least 1 percent of domestic scheduled passenger revenue) to U.S. carriers that operate scheduled service with at least one aircraft with a design capacity of more than 60 seats; (2) expanded the definition of ''animal'' from only a pet in a family household to include all cats and dogs transported by covered carriers, regardless of whether the cat or dog is transported as a pet by its owner or as part of a commercial shipment (*e.g.,* shipped by a breeder); (3) required covered carriers to file a calendar-year report in December, even if the carrier did not have any reportable incidents during the calendar year; (4) required covered carriers to provide in their December reports the total number of animals that were lost, injured, or died during air transport in the calendar year; and (5) required covered carriers to provide in their December reports the total number of animals transported in the calendar year. On August 25, 2015, OMB approved the information collection request, ''Reports by Air

[1] 83 FR 23524 (May 21, 2018).

[2] *Id.*

[3] 44 U.S.C. 3507(b); 5 CFR 1320.12(d).

[4] 44 U.S.C. 3507(b)–(c); 5 CFR 1320.12(d).

[5] 60 FR 44978, 44983 (August 29, 1995).

[6] Reporting Directive Regarding Incidents Involving Animals During Air Transport, 68 FR 47798 (August 11, 2003).

[7] Reports by Air Carriers on Incidents Involving Animals During Air Transport, 70 FR 7392 (February 14, 2005).

[8] Reports by Air Carriers on Incidents Involving Animals During Air Transport, 79 FR 37938 (July 3, 2014) (codified at 14 CFR part 235).

Carriers on Incidents Involving Animals During Air Transport,'' through August 31, 2018.

As noted earlier, on May 21, 2018, DOT published a **Federal Register** notice with a 60-day comment period to renew this ICR. The comment period closed July 20, 2018.

In order to reduce burden to covered carriers, the ACPD established a website and online system for filing the required reports, *http://animalreport.ost.dot.gov*. This system enables covered carriers to easily and efficiently submit their reports through the internet rather than sending the reports to the Department by mail or email.

Respondents: U.S. carriers that operate scheduled passenger service with at least one aircraft having a designed seating capacity of more than 60 seats.

Estimated Number of Respondents: 32.

Frequency: For each respondent, one information set for the month of December, plus one information set during some other months (1 to 12).

Estimated Total Burden on Respondents: (1) Monthly reports of incidents involving the loss, injury, or death of animals during air transport: 0 to 384 hours (Respondents [32] × Time to Prepare One Monthly Report [1 hour] × Frequency [0 to 12 per year]). (2) December report containing the total number of animals that were lost, injured, or died during air transport in the calendar year and the total number of animals that were transported in the calendar year: 16 hours (Respondents [32] × Time to Prepare One December Report [0.5 hour] × Frequency [1 per year]).

Public comments invited: You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility, and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. All comments will become a matter of public record.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.27(n).

Issued in Washington, DC, on August 23, 2018

Blane A. Workie,

Assistant General Counsel for Aviation Enforcement and Proceedings.

[FR Doc. 2018–18730 Filed 8–28–18; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Proposed Collection; Comment Request; Solicitation of Proposal Information for Award of Public Contracts

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on this continuing information collection, as required by the Paperwork Reduction Act of 1995. The public is invited to submit comments on the collection(s) listed below.

DATES: Written comments must be received on or before October 29, 2018.

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

Email: Thomas.olinn@treasury.gov. The subject line should contain the OMB number and title for which you are commenting.

Mail: Thomas O'Linn, Office of the Procurement Executive, Department of the Treasury, 1500 Pennsylvania Ave. NW, Metropolitan Square, Suite 6B113, Washington DC 20220.

All responses to this notice will be included in the request for OMB's approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of the information collection can be directed to the addresses provided above.

SUPPLEMENTARY INFORMATION:

Title: Solicitation of Proposal Information for Award of Public Contracts.

OMB Control Number: 1505–0081.

Type of Review: Extension without change of a currently approved collection.

Abstract: Treasury Bureaus and the Office of the Procurement Executive collect information when inviting firms to submit proposals for public contracts for supplies and services. The information collection is necessary for compliance with the Federal Property and Administrative Services Act (41 U.S.C. 251 *et seq.*), the Federal Acquisition Regulation (FAR) (48 CFR Chapter 1) and applicable acquisition regulations. Information requested of offerors is specific to each procurement solicitation, and is required for Treasury to properly evaluate the capabilities and experience of potential contractors who desire to provide the supplies or services to be acquired.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 23,781.

Estimated Number of Responses per Respondent: 1.

Estimated Hours per Response: 9.

Estimated Total Annual Burden Hours: 214,029.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services required to provide information.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: August 24, 2018.

Spencer W. Clark,

Treasury PRA Clearance Officer.

[FR Doc. 2018–18761 Filed 8–28–18; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

United States Mint

2018 Pricing of Numismatic Gold, Commemorative Gold, Platinum, and Palladium Products Grid

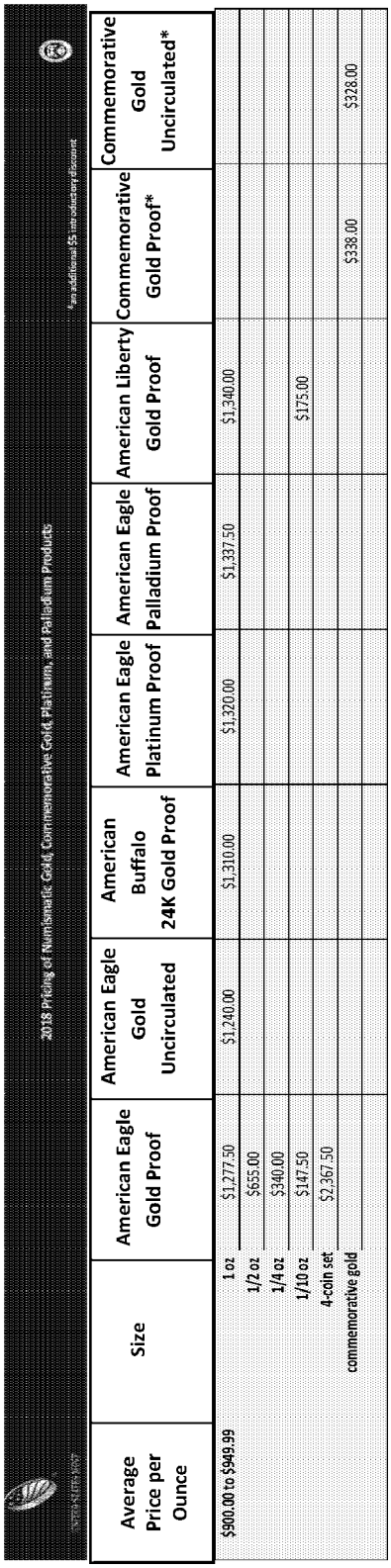
AGENCY: United States Mint, Department of the Treasury.

ACTION: Notice.

The United States Mint announces 2018 revisions to include palladium pricing within the Numismatic Gold, Commemorative Gold, Platinum, and Palladium Products Grid.

An excerpt of the grid with a recent price range for palladium appears below:

BILLING CODE P



2018 Pricing of Numismatic Gold, Commemorative Gold, Platinum, and Palladium Products

* an additional $5 mint order entry discount

Average Price per Ounce	Size	American Eagle Gold Proof	American Eagle Gold Uncirculated	American Buffalo 24K Gold Proof	American Eagle Platinum Proof	American Eagle Palladium Proof	American Liberty Gold Proof	Commemorative Gold Proof*	Commemorative Gold Uncirculated*
$900.00 to $949.99	1 oz	$1,277.50	$1,240.00	$1,310.00	$1,320.00	$1,337.50	$1,340.00		
	1/2 oz	$655.00							
	1/4 oz	$340.00							
	1/10 oz	$147.50					$175.00		
	4-coin set	$2,367.50							
	commemorative gold							$338.00	$328.00

The complete 2018 Pricing of Numismatic Gold, Commemorative Gold, Platinum, and Palladium Products Grid will be available at *https://catalog.usmint.gov/coin-programs/american-eagle-coins.*

Pricing can vary weekly dependent upon the London Bullion Market Association gold, platinum, and palladium prices weekly average. The pricing for all United States Mint numismatic gold, platinum, and palladium products is evaluated every Wednesday and modified as necessary.

FOR FURTHER INFORMATION CONTACT: Cathy Olson; Numismatic and Bullion Directorate; United States Mint; 801 9th Street NW, Washington, DC 20220; or call 202–354–7500.

Authority: 31 U.S.C. 5111, 5112, & 9701, Public Law 111–303.

Dated: August 20, 2018.

David J. Ryder,

Director, United States Mint.

[FR Doc. 2018–18233 Filed 8–28–18; 8:45 am]

BILLING CODE C

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0085]

Agency Information Collection Activity Under OMB Review: Appeal to Board of Veterans' Appeals

AGENCY: Board of Veterans' Appeals, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Board of Veterans' Appeals, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 28, 2018.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*, or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW, Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0085'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–5870 or email *cynthia.harvey-pryor@va.gov.* Please refer to ''OMB Control No. 2900–0085'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: Public Law 115–55; 38 U.S.C. 5104B, 5108, 5701, 5901, 7103, 7104, 7105, 7101.

Title: Appeal to Board of Veterans' Appeals, VA Form 9; Services Withdrawal by Representative; Requests for Change to Hearing Date; Motions for Reconsideration.

OMB Control Number: 2900–0085.

Type of Review: Extension of a currently approved collection.

Abstract: Appellate review of the denial of VA benefits may only be completed by filing a VA Form 9, ''Appeal to Board of Veterans' Appeals.'' 38 U.S.C. 7105(a) and (d)(3). Additionally, the proposed information collections allow for withdrawal of services by a representative, requests for changes in hearing dates and methods under 38 U.S.C. 7107, and motions for reconsideration pursuant to 38 U.S.C. 7103(a).

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 83 FR 18878 on April 30, 2018.

Affected Public: Individuals and households.

Estimated Annual Burden: 59,770 hours.

Estimated Average Burden Per Respondent: 61.196 minutes.

Frequency of Response: Once.

Estimated Number of Respondents: 58,602.

By direction of the Secretary.

Cynthia D. Harvey-Pryor,

Department Clearance Officer, Office of Quality, Privacy and Risk, Department of Veterans Affairs.

[FR Doc. 2018–18720 Filed 8–28–18; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 83 Wednesday,
No. 168 August 29, 2018

Part II

Federal Communications Commission

47 CFR Parts 1, 2, et al.
Expanding Flexible Use of the 3.7 to 4.2 GHz Band; Proposed Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2, 25 and 27

[GN Docket No. 18–122; GN Docket No. 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: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission or FCC) adopts a Notice of Proposed Rulemaking (NPRM) to pursue the joint goals of making 3.7–4.2 GHz band 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. The Commission seeks comment on various proposals for transitioning all or part of the band for flexible use, terrestrial mobile spectrum, with clearing for flexible use beginning at 3.7 GHz and moving higher up in the band as more spectrum is cleared. The Commission also seeks comment on potential changes to its rules to promote more efficient and intensive fixed use of the band on a shared basis starting in the top segment of the band and moving down the band.

DATES: Comments are due on or before October 29, 2018; reply comments are due on or before November 27, 2018.

ADDRESSES: You may submit comments, identified by GN Docket No. 18–122, 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: Ariel Diamond of the Wireless Telecommunications Bureau, Broadband Division, at (202) 418–2803 or *ariel.diamond@fcc.gov,* Anna Gentry of the Wireless Telecommunication Bureau, Mobility Division, at 202–418–7769 or *anna.gentry@fcc.gov,* or Christopher Bair of the International Bureau, Satellite Division, at 202–418–0945 or *chistopher.bair@fcc.gov.* For information regarding the Paperwork Reduction Act of 1995, contact Cathy Williams, Office of Managing Director, at (202) 418–2918 or *cathy.williams@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the NPRM portion of the Commission's *Order and NPRM,* 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, as well as comments, reply comments, and ex parte submissions, 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).

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. 18–122.
- *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.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW, Washington, DC 20554.

People with Disabilities: 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 & Governmental Affairs Bureau at 202–418–0530 (voice), 888–835–5322 (tty).

Ex Parte Rules—Permit-But-Disclose

Pursuant to § 1.1200(a) of the Commission's rules, this *Order and NPRM* 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 IRFA of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the attached 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 specified in the FNPRM for comments. The Commission will send a copy of this FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

Paperwork Reduction Act

The *NPRM* may result in 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 such requirements, as required by the Paperwork Reduction Act of 1995. 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. 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 band, the Commission collects information on current FSS uses. The Commission then seeks comment on various proposals for transitioning all or part of the band for flexible use, terrestrial mobile spectrum, with clearing for flexible use beginning at 3.7 GHz and moving higher up in the band as more spectrum is cleared. The Commission also seeks comment on potential changes to the Commission's rules to promote more efficient and intensive fixed use of the band on a shared basis starting in the top segment of the band and moving down the band. To add a mobile, except aeronautical mobile, allocation and to develop rules that would enable the band to be transitioned for more intensive fixed and flexible uses, the Commission encourages commenters to discuss and quantify the costs and benefits associated with any proposed approach along with other helpful technical or procedural details.

II. Background

A. 5G Leadership and Closing the Digital Divide

2. America's appetite for wireless broadband service is surging. And while mobile traffic is surging in sections of the United States, many communities still lack access to meaningful broadband connectivity. More intensive use of spectrum can allow wireless operators to fill in gaps in the current broadband landscape. Additional spectrum must be identified, however, if the Commission is to seize the 5G future and meet the connectivity needs of all Americans.

3. Enabling next generation wireless networks and closing the digital divide will require efficient utilization of the low-, mid-, and high-bands. In recent years, the Commission has taken several steps to use low-band spectrum below 3.7 GHz more efficiently and intensely, and it has paved the way for new opportunities in high-band spectrum above 24 GHz. Having identified additional spectrum in low- and high-bands, the Commission now seeks to identify mid-band spectrum for wireless broadband services. Mid-band spectrum is well-suited for next generation wireless broadband services due to the combination of favorable propagation characteristics (compared to high bands) and the opportunity for additional channel re-use (as compared to low bands).

4. Congress recently addressed the pressing need for additional spectrum for wireless broadband, including both mobile and fixed services, in the FY 2018 omnibus spending bill, which includes the MOBILE NOW Act under Title VI of RAY BAUM'S Act. The MOBILE NOW Act directs that spectrum be made available for new technologies and to maintain America's leadership in the future of communications technology. Section 603(a)(1) of the MOBILE NOW Act requires that no later than December 31, 2022, the Secretary of Commerce, working through the National Telecommunications and Information Administration (NTIA), and the Commission ''shall identify a total of at least 255 megahertz of Federal and non-Federal spectrum for mobile and fixed wireless broadband use.'' In making 255 megahertz available, 100 megahertz below 8000 MHz shall be identified for unlicensed use, 100 megahertz below 6000 MHz shall be identified for use on exclusive, licensed basis for commercial mobile use, pursuant to the Commission's authority to implement such licensing in a flexible manner, and 55 megahertz below 8000 MHz shall be identified for licensed, unlicensed, or a combination of uses.

5. Additionally, § 605(b) of the MOBILE NOW Act specifically requires the Commission to evaluate ''the feasibility of allowing commercial wireless services, licensed or unlicensed, to use or share use of the frequencies between 3700 megahertz and 4200 megahertz,'' which the Commission sought comment on in May 1, 2018 Public Notice. The Commission notes that there is no federal allocation for the 3.7–4.2 GHz band. The Commission intends to consult with NTIA and the heads of each affected Federal agency, as required by the Act, regarding the Federal entities, stations, and operations in the band, and the required issues and assessments for the report under § 605(b). This *NPRM,* in conjunction with the report under § 605(b), furthers the Commission's evaluation of mid-band spectrum to meet § 603's statutory mandate as well as to accommodate projected future demand.

B. 2017 Mid-Band Notice of Inquiry

6. In the 2017 *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. The *Mid-Band NOI* sought comment in particular on three mid-range bands that have garnered interest from stakeholders for expanded flexible use (3.7–4.2 GHz, 5.925–6.425 GHz, and 6.425–7.125 GHz), and it asked commenters to identify other mid-

range frequencies that may be suitable for expanded flexible use. In the interest of clarity and expeditiously making spectrum available for wireless broadband use, this *NPRM* will evaluate the 3.7–4.2 GHz band individually, and the Commission may address other mid-band spectrum bands, including the 5.925–6.425 and 6.425–7.125 GHz bands, in subsequent item(s).

III. Notice of Proposed Rulemaking

A. The Future of Incumbent Usage of 3.7–4.2 GHz

1. Protecting Incumbent Earth Stations

7. The Commission proposes to protect incumbent earth stations from harmful interference as the Commission increases the intensity of terrestrial use in the band. The Commission seeks comment on how to define the appropriate class of incumbents for protection. For FSS earth station licensees and registrants, the Commission proposes to define incumbent stations as earth stations that: (1) Were operational as of April 19, 2018; (2) are licensed or registered (or had a pending application for license or registration) in the IBFS database as of October 17, 2018; and (3) have timely certified the accuracy of information on file with the Commission to the extent required by the *Order.* Although earth stations that have not filed an exhibit demonstrating coordination with terrestrial FS stations are unprotected from interference by FS links, that requirement is of less relevance today given the minimal FS usage in the band, as well as the fact that the Commission proposes new terrestrial uses for which coordination with existing FS users will have little value. Accordingly, the Commission proposes to protect even such earth stations so long as they meet the criteria described above.[1]

8. The Commission proposes to exclude from the definition of incumbents any earth stations that are not licensed or registered in IBFS, or that are licensed or registered in IBFS, but for which the licensee/registrant does not timely file the certification required in the *Order.* The Commission further proposes that unregistered FSS earth stations could continue to receive transmissions lawfully, but would operate on an unprotected basis as to any licensed operations in the band. The Commission also seeks comment on whether incumbents that are small entities face any special or unique issues with respect to the transition such that they should be defined differently or have different obligations.

9. The Commission asks that commenters be specific in defining a protected incumbent and in explaining the relative obligations and/or rights that protected incumbents may have under each approach for more intense terrestrial use of the band. Which categories of incumbents must new flexible use licensees relocate under each approach, what would be the standard for determining the need to relocate each category of incumbents, and what are the terms or rules pursuant to which these relocations will occur? The Commission seeks comment on specific relief that should be provided to each class of incumbents. For example, should incumbent earth station operators be provided with filters to block transmissions from flexible use operations, should they receive filters and the technical assistance necessary to install them or repoint earth station antennas as necessary, or should earth station operators be provided with a lump sum to be used at their own discretion, either to upgrade existing facilities or to enable the switch to other means of transmission? Who would be responsible for reimbursing incumbent earth station operators and C-band customers for costs incurred in any transition, and how would such cost reimbursement be accomplished? How would disputes relating to cost reimbursement be resolved? What would be the basis for establishing reasonable cost reimbursements? For example, would it take into account any required improvements or replacement to an existing antenna or its supporting structure? Would it cover any required technological assistance? How should satellite news gathering vehicles or other temporary-fixed earth stations be addressed?

a. Limiting New Earth Stations

10. On April 19, 2018, the staff released the *Freeze and 90-Day Earth Station Filing Window Public Notice,* which froze applications for new or modified earth stations in the 3.7–4.2 GHz band to preserve the current landscape of authorized operations pending action as part of the Commission's ongoing inquiry into the possibility of permitting mobile broadband use and more intensive fixed use of the band through this proceeding. The Commission now seeks comment on revising the Part 25 rules to permanently limit eligibility to file applications for earth station licenses or registrations to incumbent earth stations. This would mean that earth station operators that register or license their existing stations by October 17, 2018, would be able to modify these stations at the registered location but not add new stations in new locations, and applications for new earth station registrations would not be allowed. Limiting new earth stations in this manner would provide a stable spectral environment for more intensive terrestrial use.

b. Removing Uncertified Earth Stations

11. In response to the *Mid-band NOI,* the Commission received comments from a variety of stakeholders, many of which addressed whether the Commission's IBFS data about current operations in the band is complete and up to date. Some commenters stressed the importance of identifying existing unregistered earth stations before the Commission makes any substantial changes to the operations permitted in the band, while other commenters contend that there may be earth stations in the database that are no longer in operation.[2]

12. Regarding the first concern, in the *Freeze and 90-Day Earth Station Filing Window Public Notice,* the International Bureau announced as an exception to the freeze, a 90-day window for earth stations to register in IBFS. Also, to obtain the best information possible on existing earth stations in this band in furtherance of the Commission's ongoing inquiry without imposing a potentially unnecessary economic burden on eligible FSS earth station applicants in the 3.7–4.2 GHz band filing within the 90-day window, the International Bureau granted a temporary waiver of the frequency coordination requirement. Subsequently, the International Bureau extended the filing window by 90 days until October 17, 2018, waived additional provisions of the rules, clarified that multiple antennas located at the same address or geographic location may be filed under a single registration application and pay a single filing fee, and announced the availability of an additional option to facilitate the registration of large numbers of geographically diverse earth stations under a single ''network'' license and single fee.

13. Regarding the second concern, the staff noted that ''after the 90-day window closes, the Commission may determine to require all licensees,

[1] The Commission notes that the International Bureau waived the coordination requirement for the duration of the freeze for applications filed during the filing window (April 19, 2018 to October 17, 2018). *Freeze and 90-Day Earth Station Filing Window Public Notice* at 3–4.

[2] Registrants are required to notify the Commission when a receive-only earth station is no longer operational or when it has not been used to provide any service during any 6-month period. 47 CFR 25.131(i).

registrants, and operators with pending applications for license or registration of FSS earth stations in the 3.7–4.2 GHz band to file a certification that the earth station was operational as of the start of the freeze and remains operational at the time of the certification along with additional technical details regarding their operations to inform the Commission's resolution of issues raised in the inquiry.'' [3] In the *Order,* the Commission requires operators of earth stations licensed or registered in IBFS (except those that file new or modified registrations between April 19, 2018, and October 17, 2018, under the modified registration process outlined in the *Freeze and 90-Day Earth Station Filing Window Public Notice*) to file certifications as to the accuracy of all information in IBFS concerning their existing FSS earth station operations.[4]

14. To ensure that the Commission has the best information possible on existing earth stations in this band, the Commission proposes to update IBFS to remove 3.7–4.2 GHz band earth station licenses or registrations for which the licensee or registrant does not file the certifications required in the *Order* (to the extent they were licensed or registered before April 19, 2018). The Commission specifically proposes that an earth station registered in IBFS be automatically terminated unless the registrant timely files the certification required by the *Order* (to the extent they were licensed or registered before April 19, 2018). The Commission seeks comment on this proposal.

c. Maintenance of IBFS Data Accuracy

15. The Commission seeks comment on how—once the accuracy of 3.7–4.2 GHz band earth station data has improved—to ensure that earth station data remains accurate to facilitate frequency coordination and maximize efficient use of the spectrum. How often do the frequencies received by a given earth station change? The Commission seeks comment on whether, for a constructed and operational earth station,[5] any combination of frequency, azimuth, and elevation listed in the license or registration that is unused for more than, *e.g.,* 180 days, should be deleted from the license or registration to minimize unnecessary constraints on successful frequency coordination of new operations.

16. In addition, the Commission asks for parties to comment on whether to require an earth station licensee or registrant in the 3.7–4.2 GHz band to certify periodically, *e.g.,* annually, the continued accuracy of the information on file with the Commission. Should any requirements that the Commission adopts to help ensure that IBFS data remains accurate become effective after a transition period?

d. Revising the Coordination Policy

17. Receive-only earth stations cannot cause interference, but under the Commission's current rules they can be coordinated and licensed or registered with the Commission to protect them from terrestrial microwave stations in bands shared co-equally with the FS. Section 25.203 requires FSS applicants to coordinate their proposed frequency use prior to filing their license applications with the Commission. Earth station applicants, to the extent practicable, must select sites and frequencies in areas where the surrounding terrain and existing frequency use will minimize the possibility of harmful interference between the sharing services. An earth station applicant, prior to filing an application to register or license with the Commission, must coordinate its proposed frequency usage with existing terrestrial users and with applicants that have filed for terrestrial station authorizations. The purpose of this coordination requirement is to establish the baseline level of interference that an earth station must accept in frequency bands shared by the FS and FSS on a co-primary basis. The coordination results entitle the FSS earth station to the interference protection levels agreed to during coordination, including against subsequent FS licensees. Currently, registered or licensed earth stations in the C-band are generally coordinated and authorized to use the entire band across the full geostationary arc, a policy known as full-band, full-arc.

18. A reexamination of the full-band, full-arc coordination policy is appropriate in light of the Commission's goal to maximize spectrum efficiency and use in the 3.7–4.2 GHz band including more intensive terrestrial use of the band. Accordingly, the Commission proposes that for purposes of interference protection, earth station operators will be entitled to protection only for those frequencies, azimuths, and elevation angles and other parameters reported as in regular use (i.e., at least daily) in response to future information collections, until the incumbent starts the coordination process for an application to modify its license or registration in IBFS for its earth station. The Commission further proposes that such modification applications identify and include a coordination report for the specific combinations of frequency, azimuth, and elevation angle that the incumbent intends to use and that such technical information be reflected on the earth station application and authorization. The Commission seeks comment on this proposal.

19. At the same time, the Commission acknowledges that the full-band, full-arc policy has certain advantages, *e.g.,* it affords FSS operational flexibility, and the Commission seeks comment about the consequences of eliminating the policy. Specifically, how would this policy alter current business models and operations of C-band licensees and registrants? Are there alternatives to eliminating this policy that would have less of an impact on the current C-band business models and operations without sacrificing the efficiency maximizing goals of the Commission's proposal?

e. Information on Incumbent FSS Operations

20. In the *Order,* the Commission directs incumbent FSS earth station operators to certify as to the accuracy of existing information in IBFS, and require incumbent FSS space station operators to provide additional information. To develop a more complete record on existing FSS operations in this band, the Commission proposes to require earth station operators to file additional information on their existing facilities. To the extent that the information requested would duplicate information already available in IBFS, the Commission will direct the International Bureau to permit operators to certify that the information in IBFS remains accurate in lieu of providing the information again. Specifically, the Commission proposes and seeks comment on requiring authorized earth station operators (including operators

[3] *Freeze and 90-Day Earth Station Filing Window Public Notice* at 5. The staff also advised all potential applicants that ''the Commission may, for purposes of further action following the *NOI,* choose to take into consideration only those earth stations that are licensed, registered, or have pending applications for license or registration on file in IBFS as of [the close of the filing window].'' *Id at* 5.

[4] Above, the Commission proposes to limit the definition of incumbent earth stations to licensed or registered stations for which the operator timely files the required certification, or for which the operators timely filed for new or modified registrations between April 19, 2018 and October 17, 2018 pursuant to the *Earth Station Filing Window Public Notices.*

[5] The Commission notes that under Part 25, a station authorization shall be automatically terminated in whole or in part without further notice to the licensee upon the removal or modification of the facilities which renders the station not operational for more than 90 days, unless specific authority is requested. *Id.* § 25.161(c).

that file new or modified registrations between April 19, 2018, and October 17, 2018) to provide the following information for each antenna under each call sign: [6]

- Earth station call sign;
- geographic location;
- licensee and point of contact information;
- antenna gain;
- azimuth and elevation gain pattern;
- antenna azimuth relative to true north;
- antenna elevation angle;
- satellite(s) at which the earth station is pointed;
- transponder number(s) and how often each transponder is used: Regularly (*i.e.,* at least daily); infrequently; or backup capacity;
- antenna site elevation and height above ground.

21. The Commission's consideration of some transition options may also benefit from additional, more granular information on FSS earth station and space station operations in the band. For example, information on the type of content (*i.e.,* audio or video feeds), the total bandwidth occupied by particular users or content feeds, and the identity of the content provider could provide additional clarity on the actual usage of the band. In addition, more granular information on the nature of any periodic usage of transponder capacity (*i.e.,* daily, weekly or once a year) could provide additional clarity on the availability of spectrum in the band. The Commission seeks comment on whether to seek additional information from incumbent FSS earth station or space station operators beyond what is included in the list above. Should the Commission seek additional information on transponder loading, content type, content provider information, periodic usage, or other data that would provide a more detailed picture of the actual usage of the band? Should the Commission collect other information to more fully assess spectrum utilization in the band?

22. In the *Order,* the Commission requires operators of temporary fixed or transportable earth stations to file information concerning their existing operations, including the area within which the equipment is typically used and the frequency and duration of such use. Consistent with the Commission's proposal to collect additional information from fixed FSS earth stations, the Commission seeks comment on whether and to what extent the Commission should collect additional information specifically with respect to temporary fixed or transportable earth stations. The Commission also seeks comment on whether the categories of information proposed above for fixed FSS earth stations would need to be modified or supplemented with respect to temporary fixed or transportable earth stations.[7] For example, would it be useful to further quantify the frequency or extent of use for these operations and, if so, how should they be quantified? Commenters should provide a clear rationale for any additional information collection along with an analysis of the costs and benefits of such additional collections.

23. The Commission also seeks comment on whether to collect the information described above on a nationwide basis or whether it may be appropriate to conduct an initial information collection for an initial sample of areas. For example, should the Commission collects information from entities based on a representative sampling of different types of areas, such as urban, suburban, and rural areas? If so, how should the sample be determined? The Commission seeks comment on this and any other methodology that will effectively balance the potential burden that an information collection may impose against the need to evaluate the feasibility of clearing more spectrum in this band. The Commission also seeks comment on whether small entities and entities operating in rural areas face any special or unique issues with respect to the information collection such that they would require certain accommodations or additional time to comply. The Commission also seeks comment on the costs and benefits of an additional information collection on this band.

24. Commenters should describe, with specificity, how any additional information collection would support a given transition proposal and should provide a detailed assessment of the costs and benefits of such additional collections. The Commission also encourages commenters to submit any information that could inform the Commission's consideration of specific transition proposals, including the types of information described in this section.

2. Limiting New Space Station Operators

25. On June 21, 2018, the International Bureau released the *Space Station Freeze Public Notice,* which froze the filing of certain space-station applications in the 3.7–4.2 GHz band. To limit speculative applications for satellite usage of the band in light of this proceeding, the Commission proposes to revise the rules to similarly bar new applications for space station licenses and new petitions for market access concerning space-to-Earth operations in the 3.7–4.2 GHz band. These revisions would not extend to applications for extension, cancellation, replacement or modification of existing authorizations. Additionally, the Commission proposes that this freeze would not bar operators with existing space station authorizations in the band as of June 21, 2018, from filing applications for additional space stations, if authorization of such space stations would promote more efficient use of the band. The Commission seeks comment on the Commission's proposal.

3. Sunsetting Incumbent Point-to-Point Fixed Services

26. Due to the declining use of the band for fixed point-to-point FS links as well as the availability of other spectrum options for point-to-point links, the Commission proposes to sunset point-to-point FS use in the band. In addition, the Commission seeks comment on whether existing fixed links should be grandfathered or transitioned out of the band over some time period, after which all licenses would either be cancelled or modified to operate on a secondary, non-interference basis. If the latter, how long would incumbent users have to transition from the band? Three years? Five years? And should the Commission differentiate in treatment between those with permanent licenses and those with temporary licenses? Or those that have or are willing to relocate to the upper portion of the band?

B. Increasing the Intensity of Terrestrial Use

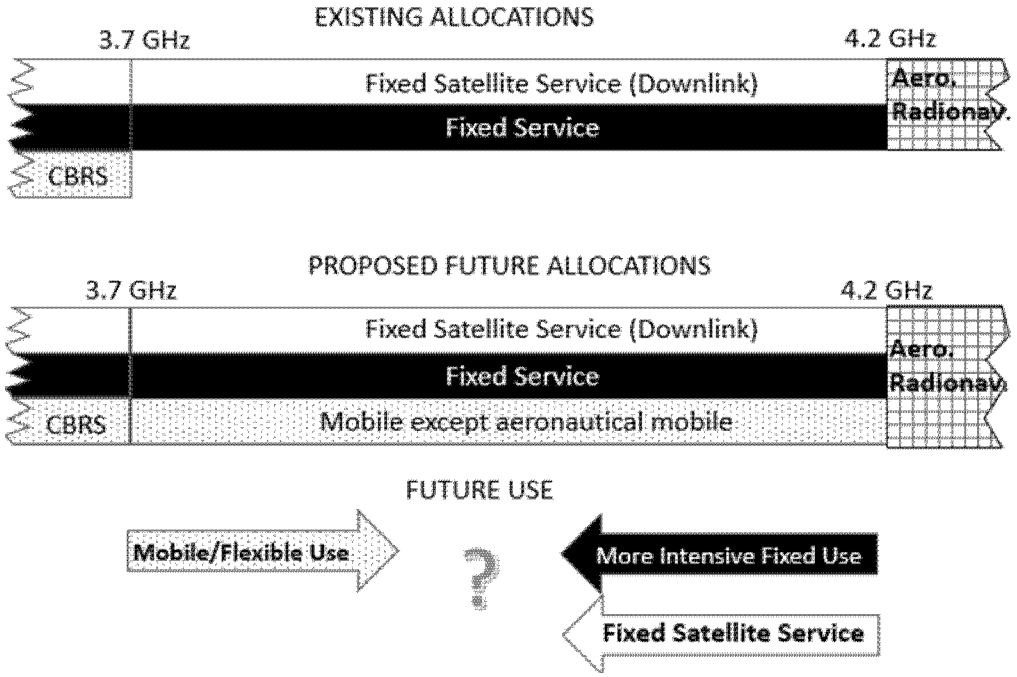
27. The Commission describes several potential approaches for repurposing the band and the Commission encourages commenters in discussing their proposals to consider the economic tradeoffs described herein. Figure 1 below demonstrates the current

[6] To reduce the burden on FSS earth station operators and ensure the accuracy of data obtained during the information collection process, IB would release a public notice that will provide guidance about how to obtain or calculate the information.

[7] SES and Intelsat provided many questions that could be asked about the nature of such earth stations and their patterns of use, but it may be difficult to quantify deployments for these earth stations other than typical capacity used when they are deployed and perhaps the area or areas within which they are typically used. Intelsat, SES July 3, 2018 *Ex Parte* Letter (GN Docket Nos. 17–183, 18–122).

and proposed future allocations and potential uses of the band.

Figure 1: 3.7-4.2 GHz Band Existing and Proposed Future Allocations and Use

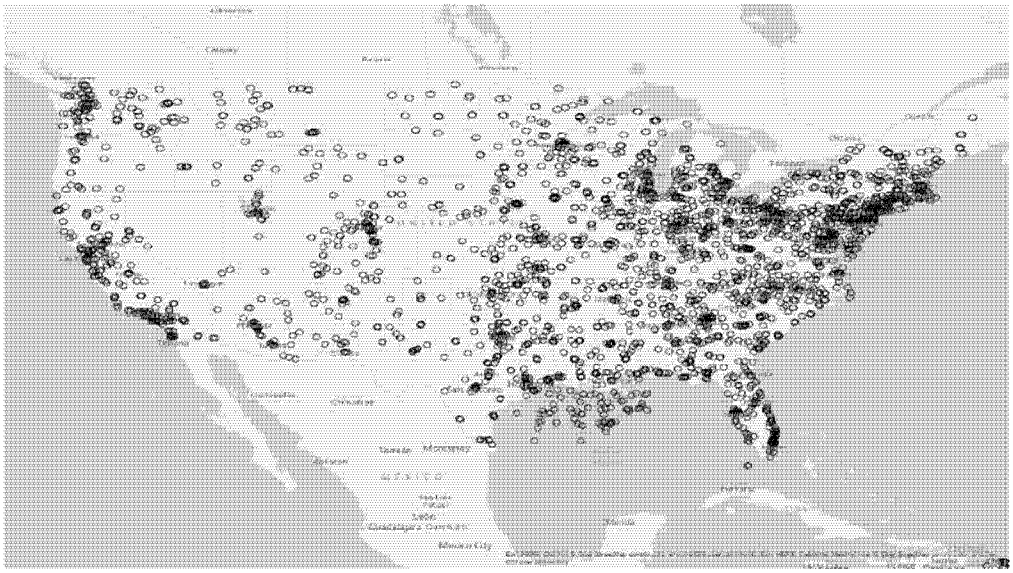


28. The Commission recognizes that co-channel sharing of spectrum between the FSS and more intensive terrestrial wireless use in the same geographic area may be difficult. For example, frequency coordination allows FSS and terrestrial fixed microwave to share the band on a co-primary basis, but coordination of mobile systems would be more complicated because the movement of the devices would require analyses and interference mitigation to FSS earth stations in this band spread over many locations within any given geographic area. In addition, because the C-band satellites are in geostationary orbit approximately 36,000 km above the equator, the signals received at the earth stations are extremely weak. This means that terrestrial mobile operations could cause harmful interference to the earth station receivers over large distances absent adequate protection.

29. Geographic sharing may be similarly difficult. Current Commission policy permits earth stations to coordinate reception across the entire GSO arc and over the entire 3.7–4.2 GHz band, which would exclude mobile wireless operations from transmitting across the entire band in a wide area around each earth station. For purposes of illustration, Figure 2 below shows a hypothetical 20 km exclusion zone around each earth station in the continental United States in the International Bureau Filing System (IBFS) database as of early May 2018.[8] These exclusion zones would cover 83.25% of the United States population.

[8] The Commission notes that commenters in this proceeding have argued that IBFS significantly undercounts the number of existing, but unregistered, earth stations. For purposes of this study the Commission used earth stations currently licensed or registered in IBFS.

Figure 2: Registered 3.7-4.2 GHz Band FSS Earth Stations in CONUS with 20 km Exclusion Zones



30. The Commission was able to establish the Citizens Broadband Radio Service in the 3550–3700 MHz despite the presence of FSS receivers because there are only FSS earth stations in 35 cities and two MSS gateways in the 3600–3700 MHz band. This is unlike the current incumbent earth station environment in the 3.7–4.2 GHz band. Therefore, subject to confirming the landscape of existing earth stations through the certifications required by the *Order,* co-channel sharing between FSS and mobile wireless could exclude a majority of the population from receiving flexible fixed and mobile broadband service in the 3.7–4.2 GHz band unless FSS use of the band is modified or FSS protection criteria are significantly relaxed. The Commission recognizes that the affected population would likely be less if the Commission was to only protect the earth stations based on the transponder frequencies received at each site and actual antenna azimuth and elevation, but the overall assessment that mobile service would not be viable for much of the population would remain the same. The Commission seeks comment on this assessment.

31. Notably, the Commission believes that increased terrestrial use of the band is ripe to meet the Commission's mandate under the MOBILE NOW Act to identify (with NTIA) 255 megahertz of spectrum for mobile and fixed wireless broadband use. For purposes of meeting § 603(a)(1), § 603(a)(3)(E) states ''[s]pectrum that the Commission determines had more than *de minimis* mobile or fixed wireless broadband operations within the band on the day before the date of enactment of this Act'' is non-eligible for purposes of satisfying the 255 megahertz requirement. The Commission believes that there was no more than a *de minimis* amount of mobile or fixed wireless broadband operations in the 3.7–4.2 GHz band on March 22, 2018 (the day before the date of enactment of the MOBILE NOW Act) for purposes of fulfilling § 603. Specifically, since FSS is neither an ''unlicensed use'' nor an ''exclusive, licensed basis for commercial mobile use,'' FSS services are not included in the *de minimis* exception under § 603(a)(3)(E). Additionally, FSS in the band is predominantly used for the delivery of video programming with only a *de minimis* portion of the satellite capacity used to provide data services. The Commission notes that there is no mobile allocation in the band and the Commission's licensing database indicates that there are only 115 fixed point-to-point licenses in the band. Thus, any portion of this band made available for flexible terrestrial or more intensive fixed use would help satisfy the requirement of § 603(a)(1) to identify a total of at least 255 megahertz of spectrum for ''mobile and fixed wireless broadband use.'' The Commission seeks comment on these findings.

32. The Commission seeks comment on approaches for expanding flexible and more intensive fixed use of the band without causing harmful interference to incumbent operations. In discussing how much of the band should be made available for flexible use, more intensive fixed use, or maintained just for incumbent uses, the Commission asks commenters to address the relative present and future economic value of each of these services to individuals and businesses in the United States. What are the tradeoffs in accommodating one type of use instead of another? And what are the costs associated with accommodating new uses? Commenters should provide a detailed cost-benefit analysis in their proposal and address the relative economic values of alternative uses and the implementation costs of their specific proposal vis-à-vis other possible approaches to the band. The Commission also asks commenters to address the economic impact of the implementation time frame associated with their chosen approach.

33. The Commission proposes to add a non-federal mobile, except aeronautical mobile, service allocation to the 3.7–4.2 GHz band, and given the Commission's conclusion that co-channel sharing is not feasible, seek comment on several proposals below to clear all or part of the band for flexible use. In particular, the Commission seeks comment on the economic benefits of introducing a new allocation for mobile, except aeronautical mobile, and flexible use relative to the introduction of point-to-multipoint FS, perhaps shared with FSS, in all or part of the 3.7–4.2 GHz band. Commenters should consider the economic value of current and future use cases for each type of service, including benefits and opportunity costs to consumers and the Nation's economy overall, as well as to unserved or underserved areas and specialized market segments (*e.g.,* education, telemedicine, and manufacturing).

Commenters should also address the benefits of international harmonization both in terms of devices and network deployments. In addition, the Commission encourages commenters to consider the economic impact on consumers and businesses in rural communities and areas that are unserved or underserved by current broadband providers, as well as any economic impact on small businesses. The Commission also asks commenters to address how long it will take to transition various amounts of this band to flexible use or to point-to-multipoint FS use, how much such a transition will cost for each 100 megahertz that is transitioned, and how expeditiously the transition can be completed.

34. The Commission also seeks comment on the current and future economic value of FSS in the band. How intensively is this spectrum used by existing FSS licensees and how intensely will it be utilized in the future? Is spectrum in the band allocated to FSS currently being used efficiently and are there technologies that may facilitate more efficient use of spectrum in the band by FSS licensees without significant disruption to consumers and businesses that rely on these services? Are there alternative technologies available that could wholly or partially replace the services provided by FSS without significant disruption to existing customers? How long would it take and how much would it cost to transition existing customers to these alternative technologies? How may the cost-benefit analysis shift depending on how much spectrum is transitioned at particular times? Are there other considerations that the Commission should consider when assessing the most economically efficient allocation of the band between services? And would such considerations differ depending on when and how much spectrum is ultimately transitioned to flexible use?

1. Mechanisms for Expanding Flexible Use

35. Repurposing of the 3.7–4.2 GHz spectrum bands allocated to FSS raises at least three economic problems, some of which have not arisen in previous spectrum auctions. The first two problems are direct consequences of the C-band licensing structure, while the last is common to all spectrum reallocations. First, because all FSS licensees have equal, nonexclusive rights to the entire band under part 25 of the Commission's rules, they cannot compete in the same way that broadcast television licensees did in the broadcast incentive auction. Second, this nonexclusive licensing problem creates an incentive for an FSS licensee to overstate the value it assigns to the spectrum in order to increase the share of auction revenue it may receive. The Commission will refer to this as the ''holdout'' problem. Third, repurposing some of the 3.7–4.2 GHz spectrum band will reduce the amount of spectrum available for FSS, which lowers industry capacity and could lead to higher prices for downstream services, such as the transmission of video to cable head ends. The Commission notes that the first and last problems create opposite incentives for FSS licensees. The first provides an incentive to repurpose less than the efficient amount of spectrum while the last may create an incentive to repurpose more than the efficient amount.

36. The broadcast incentive auction relied on competition among licensees to induce broadcast incumbents to reveal the least amount they must be paid to relinquish their spectrum rights. Many broadcast licenses were substitutes because if one licensee bid to relinquish its spectrum usage rights this could make spectrum available to repack other broadcast stations and free spectrum for flexible use. In the 3.7–4.2 GHz FSS, all licensees must agree to relinquish their spectrum rights in a given geographic area in order to reassign spectrum and therefore licenses are not substitutes and competition is limited.

37. In addition to the problem that satellite licensees will not be competing to supply spectrum in the same way that television licensees did in the broadband incentive auction, there is an additional problem concerning how the satellite licensees will split any revenues from repurposing. In order to increase its share of auction revenues, a FSS licensee may have an incentive to overstate the value it assigns to the spectrum or to withhold its consent to repurpose. The holdout problem is the inverse of a public goods problem. The 500 megahertz of spectrum allocated for FSS is a public good, in that several distinct companies make non-exclusive, non-rivalrous use of the spectrum within a geographic area.[9] Were the spectrum unallocated, the FSS providers would face a classic public goods problem since the total value of the spectrum is the sum of the values of the FSS operators. With property rights assigned to FSS operators, the Commission faces a reverse public goods problem: How to recover an efficient amount of a public good which is no longer efficiently allocated? In the classic public goods problem, if individuals are asked to pay for the public good based on their valuation of that good, they will have an incentive to understate their value for the public good to lower their payment. In the reverse problem, however, each FSS licensee has an incentive to overstate its value of the spectrum in order to increase its payment.

38. Several mechanisms have been developed to generate an efficient allocation of public goods, including one proposed by Hal Varian. In the standard public goods case, Varian proposed that individuals have the opportunity to subsidize the contributions of others towards the public good in a first-stage and then decide how much to contribute in a second-stage. Can such mechanisms be adapted to solve the holdout problem under consideration here? For example, in the first stage might each party announce the share of the payment it receives that it will give to each other party and in the second stage nominate how much spectrum to clear? Can such a mechanism be modified to mitigate the incentive to clear less than the efficient amount of spectrum? Some commenters suggest having the FSS providers meet, privately negotiate, and agree to put spectrum up for auction. The Commission seeks comment on the relative merits of FSS provider cooperation versus a more formal, non-cooperative mechanism, especially with regard to the three economic problems.

39. FSS operators currently compete to provide communication services (for example, to deliver programming content to rural cable companies). For the efficient allocation of spectrum, the social value of these services needs to be balanced against the social value of alternative services that could be provided by that spectrum, such as mobile data. Several commenters, such as the American Cable Association, contend that earth stations can and do switch providers, suggesting that competition currently exists in the C-band. Since a reduction in industry capacity generally leads to higher prices, reducing the spectrum associated with FSS may have the unintended consequence of increasing the price of FSS services and consequently of downstream services. Conversely, such a reduction should correspond with an increase in industry capacity for high-speed wireless broadband services, which would tend to lead to lower prices. How should the Commission evaluate proposed mechanisms with regard to their effect on downstream users of FSS and wireless broadband

[9] The Commission notes, however, that orbital slots are rivalrous.

services? How should the Commission take into account other opportunities to deliver these services—such as other means of transmitting programming data like alternative satellite bands [10] or fiber and other means of transmitting high-speed broadband like other mid-band spectrum or fiber—in evaluating these effects?

40. In addition, the value of spectrum in alternative uses like mobile data is likely highest in dense urban areas. When the Commission has sold spectrum by geographic region, the prices obtained have been positively correlated with population density. FSS substitutes, particularly fiber, are most prevalent in urban areas while in rural areas there are fewer FSS substitutes. Thus, in rural areas, typically the value of the spectrum remaining in FSS is relatively high while the opportunity cost of clearing less flexible-use spectrum is relatively low, suggesting that the amount of spectrum repurposed should vary across geographic areas. The Commission therefore seeks comment on whether the Commission should repurpose a minimum amount of spectrum nationwide, and make additional fully unencumbered spectrum available in any areas where it is less costly to transition earth stations to other forms of transmission. Under this approach, the Commission also seeks comment on the appropriate size of such regions. If the regions are too small, this could make mobile data use impractical because it would not give wireless providers sufficient flexibility to scale their networks using this band, while if the regions are too large, this could threaten rural services because those regions would not be attractive to small and rural wireless providers. Is it practical to create regions based on the existence of alternatives to FSS like fiber? The Commission seeks comment on whether any flexible use licenses should also be overlay licenses, for which the terrestrial licensee is obligated to protect licensed or registered earth stations and can use any spectrum that becomes available by clearing earth stations.

41. Another consideration in the geographical division of spectrum involves the parties to compensate. Instead of paying FSS operators for relinquishing spectrum usage rights nationwide or in specific geographic regions a mechanism instead might pay earth stations for relinquishing access to C-band spectrum in specific geographic areas. Such earth stations might discontinue use in these areas by discontinuing receiving content or by receiving it by alternative transmission infrastructure like fiber, where the content might be delivered to the fiber from C-band earth stations in rural areas. Would such a mechanism present an alternative supplier of spectrum—with either the FSS operators or the earth stations effectively releasing spectrum rights? The Commission notes, however, that the holdout problem for licensed earth stations is likely more severe because there are more such earth stations that are independently owned than satellite operators. The Commission seeks comment on the practicality and social value of compensating licensed earth stations in exchange for agreeing to no longer be licensed to receive in the 3.7–4.2 GHz band. In particular, would such a mechanism protect those earth stations but not unlicensed earth stations? Also, how would satellite operators be compensated for loss of revenues after the expiration of their contracts with content providers serving the licensed earth stations that discontinued their reliance on satellite delivery of content?

a. A Market-Based Mechanism

42. The commission seeks comment on whether the Commission should adopt rules that would facilitate a market-based approach to transitioning incumbents from some or all of the 3.7–4.2 GHz band. Under such an approach, the Commission would authorize incumbent FSS operators to voluntarily clear all or part of the band. Satellite operators in the band could choose to make some or all of their spectrum available to terrestrial operators on the secondary market in exchange for compensation. Under such an approach, satellite operators could be responsible for clearing the portion of the band that would be made available for flexible use, including notifying earth stations of the need to modify their operations and compensating them for any costs associated with that transition.

43. A secondary market approach might make spectrum available more quickly than other available mechanisms, such as an FCC auction, and thus could facilitate rapid deployment of next generation wireless broadband networks. In addition, such an approach could leverage the technical and operational knowledge of satellite space station operators while relying on market incentives to promote economic efficiency. The Commission seeks comment on whether a market-based approach could effectively and rapidly facilitate new terrestrial deployments in the band. The Commission also seeks comment on whether a market-based approach that allows FSS licensees to coordinate their capacity would raise any antitrust concerns.

44. The Commission seeks comment on the efficacy of using a market-based approach to transition some or all of the 3.7–4.2 GHz band to flexible terrestrial use. The Commission observes, and some commenters in the record maintain, that a significant benefit of a market-based approach may be a more rapid introduction of C-band spectrum to the market. For example, Intel, Intelsat, and SES claim that their consortium approach would result in licensed mobile services within 18–36 months of a Commission order. Commenters also should address the costs and benefits of this approach vis-à-vis the alternative proposals set forth in this section.

45. The Commission seeks comment on using a market-based approach through a Transition Facilitator, a cooperative entity created by relevant satellite operators to coordinate negotiations, clearing, and repacking the band. The Commission notes that because of the holdout problem, a market-based approach in which FSS licensees act independently is unlikely to succeed. Consequently, should the Commission allow, encourage, or require satellite operators to cooperate in negotiating with potential terrestrial mobile licensees and in clearing an agreed amount of spectrum? A market-based approach that uses a Transition Facilitator would enable the satellite operators to use private negotiations to obtain participation and agreement from the relevant satellite operators, rather than requiring the Commission to address holdouts using more regulatory mechanisms.

46. The Commission seeks comment on whether using a market-based approach in which FSS operators form a Transition Facilitator would produce an economically efficient outcome. Specifically, would allowing all potential sellers to agree on the amount and price of the spectrum that will be repurposed result in a situation in which those sellers offer a lower quantity than is socially efficient? Is that concern mitigated by the fact that the market for spectrum for high-speed broadband services is much broader than just the 3.7–4.2 GHz band? The Commission seeks comment regarding some of these concerns about the potential effects of allowing collective

[10] The Commission recognizes that other transmission methods may also compete against satellite transmission via C-band spectrum. For example, in certain urban and suburban areas where fiber is widely deployed, fiber may be a cost-effective alternative. And there may be other radio spectrum that can deliver video transmission, such as the Ku band.

action by C-band satellite operators below. The Commission also seeks comment on whether a Transition Facilitator raises any particular antitrust concerns.

47. A transition under a market-based approach could be undertaken in a four-step process. The first step would involve the industry voluntarily forming a Transition Facilitator composed of eligible C-band satellite operators.[11] In the second step, the Transition Facilitator would negotiate with any interested terrestrial operators and incumbent users. In the third step, the Commission would review the Transition Facilitator's plan and conditionally authorize terrestrial licenses in the band. And in step four, the Transition Facilitator would clear the negotiated-for spectrum, making it available for flexible use while protecting incumbent earth stations through a variety of potential means. The Commission notes as well that a market-based process need not be a one-time event—a Transition Facilitator could negotiate with parties for compensation and protection, seek Commission review and conditional authorization, and clear new spectrum multiple times to ensure the total spectrum dedicated to flexible use meets market demands. The Commission seeks comment on the effectiveness of such a four-step process. In addition, the Commission invites commenters supporting a market-based approach to suggest additional details to the steps described below or other specific approaches for implementation.

48. *Step 1: Formation of a Transition Facilitator.*—The first step in the process would be for the industry to form a Transition Facilitator. Once the Transition Facilitator is formed and ready to begin negotiations with potential licensees, the Transition Facilitator would notify the Commission of its membership, its charter, *i.e.,* its structure, objectives, and planned operation, and its compliance with any rules adopted as a result of this proceeding. Once the Transition Facilitator has filed its notification, the Commission would have 60 days to review the filing and formally object to its creation through an order. The Commission seeks comment on this process. What additional information might the Commission need to conduct such a review? Should any parties have the opportunity to formally object? Should the Commission be required to affirmatively approve or reject the formation of a Transition Facilitator, and if so on what timeline?

49. There is record support for a centralized facilitator. Intelsat and SES—the two largest incumbent satellite operators in the 3.7–4.2 GHz band—support a consortium-based facilitator. While Eutelsat raises concerns regarding how satellite operators eligible to participate in a market-based approach would be defined it has stated publicly that it wants to participate. In considering such an approach, the Commission thus asks commenters to address how to define eligibility to participate in the Transition Facilitator. The Commission seeks comment on opening eligibility to participate in the Transition Facilitator to all C-band satellite operators providing service to any part of the United States pursuant to an FCC-issued license or grant of market access. Should the Commission limit eligibility in any way, such as requiring service throughout the lower 48 states?

50. Given the holdout problem, the Commission does not propose to require that all eligible satellite operators agree to a Transition Facilitator before it can take effect. Instead, the Commission seeks comment on the appropriate number of satellite spectrum interests in the band—a majority? all but one?—that should be represented by the Transition Facilitator to effectuate a successful transition. Are a minimum number of operators required to participate in the Transition Facilitator for this approach to work? If this number is not met, should the Transition Facilitator be approved by the Commission?

51. The Commission also seeks comment on what the Transition Facilitator should do if one or more eligible C-band satellite operators choose not to participate in the Transition Facilitator. Are any Commission actions necessary if one or more eligible C-band satellite operators do not join the Transition Facilitator? The Commission notes that Intelsat and SES propose that eligible C-band satellite operators that do not join a centralized facilitator would nonetheless have their ''reconfiguration and relocation costs covered.'' How would such a process work? Should the Transition Facilitator, or members of the Transition Facilitator, negotiate with non-participating satellite companies to ensure the spectrum is successfully repurposed? Or should non-participating satellite companies be bound by the decisions of the Transition Facilitator? If the latter, would a non-participating satellite company be limited to recouping its costs? Or would it be even eligible to recoup costs so long as the Transition Facilitator adequately protects its associated incumbent earth stations?

52. If there are earth station registrants or licensees that have no contractual relationship with any of the members of the Transition Facilitator or any FSS space station operators, will that create difficulties in clearing the band during later steps in the process? If so, how can those difficulties be addressed? Is there any reason that the Transition Facilitator would not able to negotiate with earth stations that don't have contractual relationships with any of the Transition Facilitator's members? Should there be a requirement that the C-band operators participating in the Transition Facilitator have contractual relationships with a minimum percentage of protected incumbent earth stations to avoid these potential difficulties? Should the Transition Facilitator be required to work with non-participating satellite companies to protect incumbent earth stations, or should the Transition Facilitator be free to work directly with those entities?

53. To ensure that the transition process proceeds expeditiously, should the Commission establish a benchmark for the Transition Facilitator filing of six months after **Federal Register** publication of an order in this proceeding?[12] What if a Transition Facilitator is not created within the specified timeframe? Should the Commission have in place other means of reassigning the spectrum? Finally, the Commission also seeks comment on what form of supervisory authority the Commission should maintain over the Transition Facilitator, if any.

54. *Step 2: Negotiation Period.*—The next step in the process would be to undertake negotiations for spectrum rights in the band. The Commission anticipates that the Transition Facilitator would engage in a multi-step process to negotiate with prospective licensees and protected incumbent earth stations in the band. The result of these negotiations would be a Transition Facilitation Plan that would lay out what spectrum would be made available for flexible use (and where) as well as the steps the Transition Facilitator plans to take to ensure that protected incumbent earth stations continue to have access to the content or bandwidth they currently receive using C-band earth stations.

55. For example, the negotiation process could include the following steps. First, the Transition Facilitator

[11] In this context, clearing refers to relinquishing interference protection. Satellite transmissions that do not cause interference to terrestrial operations would not necessarily have to be cleared.

[12] The Commission will release a Public Notice announcing the start of the transition period.

would identify the profit-maximizing feasible amount of spectrum to make available by soliciting inquiries from all interested terrestrial wireless parties and negotiating for specific spectrum blocks and markets. This amount of spectrum demanded might adjust during the course of negotiations. The Transition Facilitator would then conclude private agreements to protect incumbent earth stations and determine the total available supply. Next, having balanced the supply and the demand, the Transition Facilitator would provide each prospective licensee with a certification of the specific spectrum block(s) and market(s) negotiated for in the associated private agreement. Finally, the Transition Facilitator would file its Transition Facilitation Plan with the Commission. The Commission seeks detailed comment on this possible approach, including what, if any, Commission oversight is warranted. The Commission also seeks comment on this approach's costs and benefits as well as any alternative approaches.

56. Given the high demand for and high-value of mid-band spectrum, the Commission should strive to adopt a mechanism that will repurpose a socially efficient amount of spectrum in the band. Intelsat-SES-Intel believe that consortium members could make approximately 100 megahertz of spectrum available for licensed terrestrial service via privately negotiated agreements between consortium members and prospective terrestrial licensees. In addition, under that proposal, consortium members would clear an additional 40 to 60 megahertz above this spectrum to act as an internal band to protect against harmful interference from transmissions in the adjacent spectrum. Intel maintains that, if the demand for terrestrial mobile spectrum is as robust as commonly believed by 5G supporters, this market-based approach could clear additional spectrum beyond the 100 megahertz proposed by Intelsat and SES in the same timeframe. The Commission notes that T-Mobile asserts that a market-based approach ''creates tremendous uncertainty regarding the availability of this spectrum for mobile broadband services and will likely result in inefficient reallocation of spectrum.'' To address this concern, the Commission seeks comment on whether to require that an Initial Minimum Spectrum Benchmark—a socially efficient amount of spectrum—be repurposed in the band in order to use a market-based approach, and what this amount should be. Should the Commission set the Initial Minimum Spectrum Benchmark to be 100 megahertz, given the comments of Intelsat and SES? Would a higher or lower benchmark be appropriate? Should the Commission require the Transition Facilitation Plan to require the clearing of at least the Initial Minimum Spectrum Benchmark for approval? In addition, the Commission seeks comment on whether an internal protection band is necessary both above and below (*i.e.,* below 3.7 GHz) the repurposed spectrum. What benchmarks should be set for clearing an internal protection band? Commenters should describe the appropriate amount of spectrum to be repurposed, taking into account economic considerations and the expected time and costs associated with repurposing the spectrum.

57. To ensure a timely transition process, should the Commission set specific benchmarks for the completion of initial negotiations with potential terrestrial licensees as well as protected incumbent earth stations? Intel, Intelsat, and SES maintain that such negotiations could be completed within three to eight months. The Commission asks commenters to consider whether eight months is an appropriate benchmark for completion of Transition Facilitator negotiations and submission of the Transition Facilitation Plan. What should be the effect of a failure to meet such a benchmark?

58. The Commission seeks comment on how to ensure that the market-based approach's negotiation process will facilitate a competitive and open market. For example, should the Commission require that all parties act in good faith? What other rules could the Commission adopt to ensure competition in the marketplace? The Commission notes that T-Mobile raises concerns that satellite operators could choose to limit the amount of spectrum available for flexible use in order to increase their profits, while others claim it will not take into sufficient account the interests of protected incumbent earth stations. How can the Commission ensure the negotiation process accounts for the interests of all stakeholders that have interests in the band—from new wireless entrants to existing satellite operators to protected incumbent earth stations, from those living in rural America to those living in cities? Would Commission oversight of this market-based approach—or over the Transition Facilitator—benefit in any way from insights from antitrust law?

59. The Commission also seeks comment on what role, if any, the Commission should play to facilitate or oversee these private market negotiations. For example, should the Commission allow some flexibility for the negotiators to make more spectrum available in some markets than others, potentially allowing a limited number of earth stations to continue to operate using wider bandwidths in certain areas where wireless operators are less interested in deploying (*e.g.,* remote rural areas)? Should the Commission have some input on the FSS frequencies to be made available for private-market negotiations? How should these determinations be made? A market-based approach would not likely result in mutually exclusive applications for the Commission to consider if, for example, a negotiated agreement with the Transition Facilitator is a prerequisite for applying for a license in this band. Would this negotiation satisfy the Commission's obligation in the public interest to use negotiation to avoid mutual exclusivity pursuant to § 309(j)(6)(E) of the Communications Act?

60. The Commission also asks commenters to discuss the requirements and safeguards that the Commission should adopt, if any, to ensure that these privately negotiated agreements result in a timely and complete transition. The Commission will expect parties to negotiate a full range of transition commitments and penalties for failure to meet transition benchmarks. Nonetheless, does the Commission need to adopt baseline requirements, such as defining comparable facilities, including the relocation of incumbent operations to another band, to fiber, and/or to more efficient technologies? What would be the relative costs and benefits associated with adopting such requirements? Would such definitions or rules minimize disruption to existing operations during the transition? Are there mechanisms the Commission can adopt to ensure that all or specific categories of incumbents are not adversely affected by repacking of this band? For example, should the Commission require FSS space station licensees that are going to cease transmitting on a primary basis to notify earth stations receiving those signals? Could the parties determine that the transitioning of facilities should be undertaken by the terrestrial licensee instead of the Transition Facilitator? If so, would the parties or the FCC establish a benchmark for completing such a transition? Should the Transition Facilitator be required to have a mechanism for receiving reports from incumbents that experience disruptions, and should the Transition Facilitator also be required to notify the

Commission when it receives such reports? The Commission invites commenters to address the specific form of notification required, the time period for providing each notification, and the costs and benefits of each notification requirement.

61. If the Commission's role were more limited, what level of transparency, if any, should be required during the negotiation process? For example, should satellite operators be required to notify the Commission regarding the status of on-going negotiations? What types of information should be included in such a notice? Further, should the Commission require the filing of periodic reports (*e.g.,* quarterly, bi-annually, annually) to ensure that the overall transition of this band will be completed in a timely manner? What should such reports include? The Commission encourages interested parties to provide detailed comments regarding the level of Commission oversight envisioned for this process including how such oversight comports with the Commission's obligation to assign spectrum in the public interest.

62. *Step 3: Conditional Authorization of Mobile Licensees.*—Upon the submission of a Transition Facilitation Plan, the next step would be Commission review and approval of the plan, followed by applications for terrestrial license authorizations filed pursuant to the plan. The Commission seeks comment on this process. To facilitate a streamlined review, the Commission seeks comment on allowing applications for new terrestrial authorizations to be filed at the same time as a Transition Facilitation Plan, or while the Commission reviews that plan. And to avoid undue delay in commencing the band clearing process, the Commission seeks comment on the appropriate timing, criteria, and conditions that should apply to new license authorizations.

63. The Commission seeks comment on conducting the review of the Transition Facilitation Plan. Most specifically, how should the Commission ensure that protected incumbent earth stations are indeed protected? What types of certifications should be required to ensure that the Commission can take all appropriate actions to ensure that the Transition Facilitator and its members carry out the Transition Facilitation Plan and appropriately protect, compensate, and ensure adequate access for relevant stakeholder? Should the Commission make the plan available to comment, and what confidential information is likely to be included? How should the Commission evaluate the various methods suggested for protecting incumbent earth stations, such as installing filters, extending fiber, offering service on new satellites or in new satellite bands, offering service over microwave links, and creating geographic separation from harmful interference (likely only in rural areas)? What level of granularity should the Commission require the steps of the Transition Facilitation Plan to meet? And how long should the Commission have to review and approve or reject a Transition Facilitation Plan?

64. The Commission seeks comment on how to address initial licensing applications. First, the Commission seeks comment on establishing a 30-day filing window for new terrestrial license applications. Prospective licensees would file an application for any new licenses they have agreed to acquire through their negotiations with the Transition Facilitator, along with a certification from the Transition Facilitator to clear that portion of the band for the terrestrial operator's use. Should the Commission require any other specific information to be submitted as part of the application process? Applications would be accepted and reviewed pursuant to the requirements and procedures set forth in part 1 of the Commission's rules, including, among other things, the filing of certain FCC forms, release of a public notice listing the application as accepted for filing, and the opportunity for third parties to file petitions to deny the application. Upon the Commission's review and confirmation that the applicant has complied with all other Commission filing and qualification requirements, the Commission would grant a license subject to certain conditions discussed below. Second, the Commission could treat the Transition Facilitation Plan as an application for all the flexible use licenses that would be made available as a result of it being carried out, and then allow the Transition Facilitator and prospective licensees to file separate applications to transfer those licenses as the parties saw fit. Under this approach, the Transition Facilitation Plan would also have to comport with the requirements and procedures set forth in Part 1 of the Commission's rules and would be conditioned as discussed below.

65. The Commission will condition authorizations for licensed terrestrial operations on the licensee not commencing operations until the Transition Facilitation Plan's protections for incumbent earth stations have been carried out in that area (and subject to those conditions to the extent the plan requires geographic or other sharing). The provisions of any private agreement to transition designated spectrum to licensed terrestrial operations would therefore need to comply with the service rules the Commission may ultimately adopt in this proceeding. For example, under this approach, the deadlines for a licensee's regulatory obligations, including construction benchmarks, would begin running on the date of license issuance. The Commission therefore anticipates that private agreements would take construction deadlines into account when negotiating the date by which the Transition Facilitator must clear the relevant spectrum such that the licensee may commence operations. However, the Commission seeks comment on whether the Commission should consider the individually negotiated time periods for band clearing when setting the deadlines for each licensee's satisfaction of its construction benchmarks. The Commission seeks comment on these and any other conditions on new license authorizations that would facilitate efficient implementation of the market-based approach.

66. Additionally, the Commission seeks comment on what, if any, conditions should be placed on the license with respect to the protection or relocation of the approximately 115 incumbent microwave links in the band that would sunset under out proposal. For example, should the Commission require as a condition of the license that new licensees either protect or relocate incumbent users under the same part 27 and part 101 rules used for incumbent microwave links in the Advanced Wireless Services (AWS) bands or under some other protection and/or relocation mechanism?

67. To ensure a timely transition process, should the Commission set specific benchmarks for the completion of its review of the Transition Facilitation Plan and the processing of conditional authorizations? Intel, Intelsat, and SES expect the review process would take two to seven months, and propose the license grant would trigger certain obligations under private agreements, including the clearing of the band within 12–20 months. The Commission seeks comment on a process whereby the Commission would take action on all unopposed applications found acceptable for filing within four months from the commencement of the filing window discussed above (*i.e.,* a 30-day filing window plus three months of review). Upon completion of the four-month application and review process,

the Commission would notify the Transition Facilitator that it may begin clearing the designated spectrum in the band. The Commission seeks comment on this approach to triggering the commencement of the band-clearing process. Should the process instead be triggered only upon the Commission's grant of all licenses negotiated by the Transition Facilitator? Or is a certain critical mass of license grants sufficient to begin clearing incumbent users from the band? For example, to avoid undue delay of licensed operations in the band, would it be appropriate to begin clearing the band upon issuance of licenses authorized for operation in a certain portion of contiguous spectrum in the band? The Commission seeks comment on these and any other benchmarks that may be appropriate.

68. The Commission also recognizes that the Transition Facilitator may find it necessary and beneficial to modify certain aspects of its Transition Facilitation Plan. The Commission therefore seeks comment on allowing the Wireless Telecommunications Bureau to approve minor amendments to the Transition Facilitation Plan that would not increase harmful interference to protected incumbent earth stations.

69. The Commission notes that the ultimate assignment of any license is subject to FCC approval under § 310(d) of the Communications Act. The Commission therefore seeks comment on the application process described above and any other application criteria that may be appropriate to fulfill the Commission's statutory obligations to license spectrum in the public interest and ensure that spectrum is put to its highest and best use.

70. *Step 4—Band Clearing.* Following approval of the Transition Facilitation Plan and grant of new terrestrial licenses in the band, the final step would be clearing certain incumbent users as needed from the designated spectrum and giving new terrestrial licensees access to their licensed spectrum. The Commission seeks comment on the best way to effectuate this process.

71. The Commission seeks comment on reasonable benchmarks for incumbents to cease transmitting on a primary basis in the portion of the 3.7–4.2 GHz band that becomes available for flexible use, a process Intel, Intelsat, and SES expect to take 12–20 months. The Commission seeks comment on providing the Transition Facilitator with 20 months to clear incumbent users from the designated spectrum in the band. Under this approach, the Transition Facilitator would be responsible for enforcing the various private agreements between new terrestrial licensees and incumbent users to clear the band. As spectrum becomes available for licensed use, the Transition Facilitator would notify licensees that they may begin operating in particular areas covered by their licenses where the spectrum has been cleared.[13] In light of the Commission's expectation that spectrum will be cleared incrementally over the course of the 20-month band-clearing process, the Commission proposes to require the Transition Facilitator to provide periodic updates notifying the Commission of the specific spectrum that has been cleared. Should the Commission require the Transition Facilitator to file status reports at various benchmarks (*e.g.,* every four months)? The Commission seeks comment on these and any other benchmarks that may be appropriate to promote timely completion of the band-clearing process.

72. Finally, in light of our goal to promote the rapid deployment of new licensed terrestrial operations in the 3.7–4.2 GHz band, the Commission seeks comment on any further safeguards that should apply during the band-clearing process to ensure the transition is completed within a reasonable period of time. The Commission expects that the private agreements between new terrestrial licensees and incumbent users would contain provisions and penalties sufficient to address either party's failure to satisfy their respective contractual obligations in a timely manner. In addition to, and independent of, those private agreements, the Commission seeks comment on any appropriate penalties that should apply in the event that the Transition Facilitator is unable to clear the designated spectrum within the 20-month time period discussed above. What, if any, opportunities to cure should the Commission provide? For example, should the Commission allow new terrestrial licensees and incumbent users that default on their private agreements to re-enter the process beginning with Step 2 negotiations? If so, should the Commission apply more abbreviated time periods for the completion of each step? The Commission seeks comment on these and any other actions that may be appropriate to provide adequate opportunity for successful completion of a market-based approach, while also ensuring a rapid and efficient transition to flexible use in the 3.7–4.2 GHz band.

[13] The entire area covered by a new license would not need to be cleared in order for licensees to begin operating. Instead, subject to their individual agreements, the Transition Facilitator could begin notifying licensees of their ability to begin operations once certain portions of the area covered by the license (*e.g.,* counties) have been cleared.

b. Auction Mechanisms

73. The Commission seeks comment on various auction approaches to expand flexible use of the band. Specifically, the Commission asks commenters to consider whether an overlay auction, incentive auction, capacity auction or other auction mechanism could be used to create opportunities for flexible use of the band.

74. *Overlay Auction.*—An overlay license authorizes operations for an entire geographic area but requires the licensee to protect existing incumbents from interference indefinitely, *i.e.,* until the rights are relinquished. The Commission notes that the Commission has used overlay licensing to transition several bands from site-based to geographic-area licensing.

75. The Commission seeks comment on whether the Commission shall accept applications for one or more overlay licenses—assigned by competitive bidding if mutually exclusive applications for it were accepted—that would permit an overlay licensee to negotiate with both incumbent space station licensees and earth station owners and operators to clear all or part of the band. The Commission also seeks comment on whether the Commission shall require the overlay licensee(s) to transfer flexible use licenses in the secondary market (*i.e.,* limit an individual licensee from holding more than a certain amount of spectrum in each market). Under this approach, the overlay licensee(s) would have the right to flexible use of any spectrum that becomes available as a result of incumbents' relinquishing their spectrum usage rights. If this approach were adopted, the Commission's presumption would be that incumbent space station licensees could bid individually, but not as a consortium. Allowing incumbents to bid collectively would eliminate the possibility of competition among them for the overlay license, and would discourage other potential bidders from participating in the auction. To encourage participation in the auction, are there rules the Commission can adopt to share the risk (between bidders and the U.S. Treasury) of a less profitable repurpose than anticipated? The Commission also seeks comment on whether, if no voluntary agreement is reached between an overlay licensee and earth station operators after some number of years, the earth station operators should be

required to discontinue operation in some portion of the 3.7–4.2 GHz band if requested by the overlay licensee and if the overlay licensee delivers equivalent quality service to the locations of the earth stations that would no longer be protected. The Commission seeks comment on how equivalent quality service should be defined, especially with respect to reliability. The Commission also seeks comment on how many years incumbent earth station operators should have before they would no longer receive protection in the 3.7–4.2 GHz band, and whether this deadline should apply to all areas or only to high-population-density areas. If the latter, how should such areas be defined?

76. Would assigning an overlay license or licenses for all of the band expedite flexible use of more of the band compared to other approaches? Compared to the market-based proposal, the overlay license approach potentially would allow non-incumbent bidders to develop innovative ways to clear the spectrum and clear more spectrum or varying amounts of spectrum depending on the relative costs and benefits of such repurposing. On the other hand, an overlay licensee may take longer to clear spectrum because the two largest FSS space station operators appear to already have an agreement on how to clear at least 100 megahertz for flexible use.

77. The Commission also seeks comment on how all parties that would be affected by repurposing 3.7–4.2 GHz band spectrum should be treated. In particular, should the space station operators relinquishing spectrum or the overlay licensee be required to provide incumbent earth station operators comparable replacement facilities or media? Would an overlay auction expedite the provision of terrestrial mobile services in the 3.7–4.2 GHz band or facilitate making more than 100 megahertz of the band available for flexible use? Commenters should also address the potential costs and benefits of an overlay approach for consumers and businesses in rural and underserved communities, as well as any economic impact on small businesses, and discuss any rules or procedures that could be implemented to ensure that the needs of these communities and businesses are adequately addressed. The Commission invites comment on these issues and on other matters that it may need to address to conduct an overlay auction in this band.

78. *Incentive Auction.*—The Commission also seeks comment on approaches using the Commission's general incentive auction authority to introduce flexible use in the 3.7–4.2 GHz band. One commenter suggests that ''[FSS incumbent] satellite operators, earth station licensees, and microwave licensees all could participate in a reverse auction and choose from among several options including, for example, vacating the band for another or a fiber alternative; limiting operations to a smaller swath of spectrum; or moving to a more remote location.'' A forward auction would then generate the revenues from new entrants to support the reverse auction results, and repack incumbents into the remaining portion of the band for FSS and/or move earth stations to more remote locations.

79. The Commission seeks comment on whether a variation of the incentive auction could work in the context of the 3.7–4.2 GHz band. The Commission notes that in the case of the Commission's incentive auction authority, there is a legal aspect to the problem of FSS satellite operators' incentives to reduce the amount of spectrum for repurposing discussed above. Specifically, the Commission's legal authority to use that mechanism depends on having ''at least two competing licensees participate in the reverse auction.'' Would the Varian approach, discussed above, satisfy the statutory requirement that an incentive auction have at least two competing bidders take part in the reverse auction? The Commission seeks comment on means of inducing supply competition, such as by bringing in alternative bands as substitutes, both to insure a more competitive and efficient outcome, and to meet the legal requirement of having competing licensees participate in the reverse auction. The Commission also seeks comment on whether provision of supply by licensed earth stations can substitute for provision by FSS operators.

80. *Capacity Auction.*—As an alternative to paying satellite incumbents to directly relinquish their rights to operate on specified frequencies, the Commission seeks comment on a reverse auction for satellite transponder capacity that could be used to compensate the satellite incumbents for giving up C-band transponder capacity in order to enable the Commission to reallocate C-band spectrum to flexible use. Under this approach, an individual bidder in the reverse auction would help to clear spectrum by bidding to relinquish some (or all) of the bundle of rights they hold under their licenses and the Commission's rules to lease capacity to other parties, so as to allow alternative use of the bands of spectrum associated with specific transponders. Potential bidders could be any FCC licensee that could make transponder capacity available in, for example, either the C-band or Ku-band, as discussed further below. Satellite operators could offer capacity created by launching new satellites in vacant orbital slots and/or by relinquishing some or all of their existing capacity.

81. At the time of any incentive auction, could satellite customers or earth stations in their own right be eligible to offer capacity? For example, could they make available capacity through mechanisms such as substituting services (*e.g.* fiber) to fulfill their capacity needs, reducing the amount or quality of programming distributed, or using greater compression to reduce the capacity required to carry a given amount of programming or data? C-band capacity lost due to the reduced amount of available spectrum and that was not relinquished in the reverse auction by C-band satellite operators, could be repacked onto replacement capacity for the remaining lives of those lost transponders. This would compensate C-band licensees for their lost capital investments, but not for the loss of their spectrum. The amount of C-band spectrum reallocated could be determined by the reverse auction in combination with a forward auction for cleared spectrum. Adapting the approach of the broadcast incentive auction, the amount cleared could be the largest amount for which forward auction revenues exceed the cost of repacking the remaining C-band services plus any other compensation, *e.g.,* for the loss of spectrum, and the cost of running the auction. The Commission seeks comment on a capacity auction and whether such a mechanism could be used to create flexible use in the band.

82. Several commenters propose that Ku-band capacity could be utilized for C-band services. Other commenters raise the concern that Ku-band capacity is not a reliable replacement spectrum for C-band services. The Commission seeks comment on Ku-band capacity as a replacement for C-band, including as an alternative for infrequent, portable, or more temporary uses such as for breaking news or live sporting events. The Commission also seeks comment on how to define capacity for purpose of this approach. What capacity definition meets the needs of such an auction? Depending on the band, what adjustments would be appropriate to ensure a unit of capacity in the band is comparable with a C-band unit of capacity? Would comparable communication capacity be defined in

terms of throughput, reliability, and operating costs?

83. Advocates for a capacity auction should specifically discuss the Commission's legal authority as well as implementation details and options. For example, could the Commission use its general incentive auction authority to hold a capacity auction? Which parties should be allowed to participate in the reverse auction? Is there a way for end users to participate and, if so, how would their costs be compensated? Would this approach incentivize bidders to make the appropriate tradeoffs among inputs such as compression technology and bandwidth in producing capacity? How could a capacity auction be designed to allocate capacity efficiently over time? Would this require the reverse auction to establish separate prices for capacity in each year? Would capacity need to be defined as packages of capacity at specified dates, and would a combinatorial auction be needed to determine auction winners and prices?

84. The Commission seeks comment on the applicability of § 647 of the Open-market Reorganization for the Betterment of International Telecommunications Act (ORBIT Act) to a capacity or other auction mechanism. The Commission tentatively concludes that the prohibition is not applicable here, as any auctioned spectrum would be used for a new domestic terrestrial service, and the spectrum capacity auction does not propose to assign by competitive bidding orbital locations or spectrum used for the provision of international or global satellite communications services. The Commission also tentatively concludes that the participation in an incentive auction by Ku-band operators to provide spectrum capacity to C-band operators would not violate the ORBIT Act, because this would not constitute an ''assignment'' of satellite spectrum, because the Ku-band operators would only be giving up some of their licensed spectrum capacity, rather than ceding their actual licenses. The Commission seeks comment on this tentative conclusion and invite commenters to discuss the ORBIT Act's application to any proposed auction mechanism.

85. The Commission also invites comment on other novel incentive auction mechanisms under the Commission's general incentive auction authority. Commenters should provide data on the costs and benefits associated with any proposed approach along with other helpful technical or procedural details. Commenters should also address the potential costs and benefits of an incentive-auction approach for consumers and businesses in rural and underserved communities, as well as any economic impact on small businesses, and they should discuss any rules or procedures that could be implemented to ensure that the needs of these communities and businesses are adequately addressed.

c. Alternative Mechanisms

86. The Commission also seeks comment on approaches that combine various elements of the mechanisms discussed above, as well as other mechanisms for transitioning all or part of the 3.7–4.2 GHz band for wireless broadband use. Commenters offering sequential alternatives should address the circumstances under which one method of transitioning the band would end and a subsequent one would begin. Are any conditions necessary to prevent one approach from precluding later alternatives?

87. In response to the *Mid-Band NOI,* T-Mobile proposed a hybrid approach that would combine elements of an incentive auction and the market-based approach. Under this proposal, a consortium of satellite operators (similar to the Transition Facilitator discussed above) and potential wireless bidders would participate in a phased auction process with both forward and reverse auction components. First, the Commission would conduct a simultaneous or near simultaneous auction of the band on a geographic basis to establish the initial price per area. Second, in those areas where satellite operators were all willing to clear all 500 megahertz at the prices established in the initial phase, the spectrum would be sold and these areas would be deemed ''cleared'' for flexible terrestrial wireless use. The Commission would then determine an appropriate amount of the remaining spectrum to reserve for satellite use and the forward and reverse auction processes would repeat until a Commission-determined amount of spectrum has been cleared. Although T-Mobile proposes that auction revenues would be split between the federal government and the satellite operators, with the latter responsible for end-user relocation costs as applicable, the Commission tentatively concludes there could be statutory barriers to this aspect of the proposal, and seek comment.

88. The Commission seeks comment on whether T-Mobile's proposal, or a variant of this proposal, would solve or ameliorate the three economic problems discussed above. As discussed, there is a legal aspect to the problem of FSS satellite operators' incentives to reduce the amount of spectrum for repurposing because the Commission's incentive auction authority requires at least two competing participants in the reverse auction. Would T-Mobile's proposal, or a variant of that proposal, comply with the requirement that an incentive auction have two competing licensees in the reverse auction, as well as other requirements associated with the Commission's general incentive auction authority?

89. The Commission seeks comment on whether a hybrid approach that combines elements of the approaches discussed above would strike a balance between incumbent and new entrant interests. If the Commission decides to clear and auction the entire band, but reserve some of the band for satellite use in certain areas, what is the minimum amount that should be cleared for flexible wireless use? Would the minimum amount differ based on geographic area? Should the Commission consider auctioning a majority of the band, versus the entire band, and if so, what would be the appropriate amount of spectrum to be cleared under such an approach? How can the Commission ensure that the band is transitioned in a timely manner? Should a backstop approach be triggered by a FSS operator's failure to clear the band in a timely manner? Is this the right balance, or is there a better way that traditional relocation could be used as a backstop approach to any hybrid mechanism? Additionally, would this approach allow the Commission to meet its statutory requirements under its general incentive auction authority?

90. The Commission asks commenters to provide data on the costs and benefits associated with any hybrid approach over other possible or suggested methods. If the Commission adopted a split-revenue approach, under which revenue would be split between the federal government and the satellite operators, how would those funds be distributed? Are there are legal obstacles to such an approach? Commenters should also address the potential costs and benefits of any hybrid or alternative approach for consumers and businesses in rural and underserved communities, as well as any economic impact on small businesses, and discuss any rules or procedures that could be implemented to ensure that the needs of these communities and businesses are adequately addressed. Commenters should provide complete proposals to the extent technically and economically feasible.

2. More Intensive Point-to-Multipoint Fixed Use

91. In connection with the Commission's proposals above to reform the full-band, full-arc earth station coordination policy, the Commission seeks comment on rule changes to Part 101 to allow point-to-multipoint FS use of the 3.7–4.2 GHz band and invite parties to offer alternative rules or requirements that will allow for the more intensive point-to-multipoint FS use of the band. In doing so, the Commission seeks comment on how permitting fixed wireless would affect the possible future clearing of the band for flexible use and the use of the band for satellite operations. The Commission seeks to protect incumbent FSS earth stations from harmful interference and avoid disruption to existing operations in the band. Accordingly, the Commission seeks comment on the impact that point-to-multipoint use would have on the flexibility of FSS earth stations to modify their operations in response to technical and business needs. The Commission emphasizes that—under the proposals in this *NPRM*—point-to-multipoint would operate on a secondary basis *vis-à-vis* FSS in any part of the band in which FSS continues to operate during a transition period to accommodate repacking and, thereafter, on a frequency-coordinated basis to protect actual FSS operations.

92. *Channel Plan.*—The Commission seeks comment on amending § 101.101 to permit point-to-multipoint FS in some portion of the 3.7–4.2 GHz band. The Commission seeks further comment on amending the existing channel plan for FS in the band (paired 20 megahertz channels for frequency division duplex (FDD)) to allow time division duplex (TDD) on unpaired 20 megahertz channels. The Commission asks commenters to address interference concerns between FDD and TDD, explain how, or if, they could coexist in the portion of the band not being used for flexible use, and discuss coordination and interference rules that must apply if both were to be permitted. Should the Commission allow licensees to aggregate contiguous 20 megahertz channels up to a maximum of 160 megahertz of bandwidth? To the extent a licensee has 40 megahertz of unconstructed spectrum in a licensed service area, should the Commission require construction before allowing the licensee to acquire additional spectrum in the licensed service area? The Commission invites alternative proposals with specific discussion of the costs and benefits as to each. The Commission also seeks comment generally on the technical improvements to allow for better band utilization.

93. The Commission seeks comment on authorizing point-to-multipoint FS service, on a primary basis, in some portion of the 3.7–4.2 GHz band that does not become available for flexible use. The Commission proposes that flexible use licensees would operate in the lower segment of the band (starting at 3.7 GHz) and, if additional spectrum is cleared in the 3.7–4.2 GHz band, it would be relatively easy and cost-effective to expeditiously deploy more flexible use in the lower segment of this band that has been cleared and is contiguous to the spectrum for which flexible use is already licensed. The Commission also seeks comment as to whether, regardless of how much spectrum becomes available for flexible use in the near term, to make available for licensed point-to-multipoint use up to 160 megahertz (*e.g.,* 4.04–4.2 GHz) to accommodate a transition from FSS to flexible use working-up from 3.7 GHz. Alternatively, the Commission seeks comment on making available for point-to-multipoint use 40 megahertz, 100 megahertz or up to 320 megahertz.

94. *Service Area of Each Point-to-Multipoint FS Access Point.*—The Commission seeks comment on the best approach to define a point-to-multipoint FS access point service area. The Broadband Access Coalition requests frequency coordinated, site-specific license areas, defined as a circle designated by a specified radial distance from a center point. Should the Commission define a service area based on a specified geographic access point location and maximum radius? As an alternative, should the Commission consider coverage arc sector(s) (*e.g.,* 0°N to 30°) around the access point location and specified radii, and what should such coverage arcs be based on (*e.g.,* antenna beamwidth)? If a maximum radius around an access point is specified, should the Commission adopt a single value for all access points or values relative to whether the access point is in densely populated or rural areas? For example, the Broadband Access Coalition proposes 10 kilometers for densely populated areas and 18 kilometers for rural areas. If the Commission allows different radii based on area population density, what threshold should the Commission use to differentiate between densely populated, rural, and other areas? Should the definition of ''rural'' for these purposes be the definition used for the E-Rate program? If based on a population density, should the population be based on residents or businesses, or perhaps some combination of both? Should this information be based on the most current available U.S. Census database at the time of the license application? Is there some other metric that would be better suited to determining the appropriate maximum radius limit? The Commission seeks comment on variations of these approaches, as well as those of alternatives that might not necessarily be limited to circles, arcs, or population density.

95. *Frequency Coordination and Interference Protection.*—The Commission seeks comment on technical requirements for frequency coordination between point-to-multipoint FS applicants and licensees and FSS under Part 25 and point-to-point FS, if they are grandfathered or otherwise remain in the band, under part 101. Under the Commission's current rules, the technical aspects of coordination between FSS and terrestrial operations are based on Appendix 7 of the International Telecommunication Union (ITU) Radio Regulations and certain recommendations of the ITU Radiocommunication Sector and the technical aspects of coordination between terrestrial licensees are based on Telecommunications Industry Association's Telecommunications System Bulletin (TSB) 10–F or other procedures generally following acceptable good engineering practices. The Commission asks parties to comment on how either of the above or other standards, such as those developed by the European Telecommunications Standards Institute (ETSI) or another organization, may be applicable or adaptable to point-to-multipoint FS operations in the 3.7–4.2 GHz band. The Commission also seeks comment on whether there are interference protection criteria set forth in other parts of the Commission's rules that may be adapted to protect FSS earth stations from interference by point-to-multipoint operations in the portion of the 3.7–4.2 GHz band that does not become available for flexible use. Are there technical operating characteristics of point-to-multipoint equipment, such as power levels, that would require us to adopt different values to protect FSS earth stations from interference by point-to-multipoint operations? The Commission asks that commenters be specific in addressing the technical requirements for coordination.

96. The Commission seeks comment on allowing a point-to-multipoint FS applicant to coordinate each access point by sector based on the radius

around the geographic coordinates of the site, the antenna characteristics (*e.g.,* beamwidth), and a maximum number of client devices to be deployed within a specific distance from the access point. Should point-to-multipoint FS applicants be required to submit frequency coordination for each access point, including geographic coordinates of the access point, frequency range, power and antenna characteristics, service area limits, maximum number of future authorized client devices, and the power and antenna characteristics of individual client devices? How will prior coordination be achieved for point-to-multipoint access points when the location, height, and technical characteristics of the client devices in the access point service area are not available at the time of access point coordination? If some probability of location/height is assigned for the maximum number of client locations in order to develop an interference profile for purposes of coordination, the resulting interference predictions will have some associated probability of interference occurrence; in that case should point-to-multipoint licensees be able to add up to the maximum number of client devices without independently coordinating each client device? Should client devices be subject to additional technical limitations, such as minimum directional antenna requirements, EIRP limits, or other criteria to limit their interference potential? Should the maximum number of client devices be specified for each channel? The Commission seeks comment on the above proposals and, whether, if a point-to-multipoint FS applicant cannot successfully coordinate a geographic service area, it should be permitted to coordinate client devices on a path-to-path basis. Parties should address the technical requirements of the above, offer alternatives, and specifically detail the costs and benefits of each proposal.

97. The Commission also seeks comment on the administrative process that should apply to the coordination of point-to-multipoint FS operations in the band. Under the current rules, the administrative aspects of the coordination process are set forth in § 101.103(d) in the case of coordination of terrestrial stations with earth stations and in § 25.203 in the case of coordination of earth stations with terrestrial stations. What modifications to §§ 101.103(d), 25.203, or to another rule must be made to govern the administrative process that will apply to the coordination of point-to-multipoint FS operations with FSS and point-to-point FS, if grandfathered or remain in the band, and the coordination of FSS and point-to-point FS, if grandfathered or remain in the band, with point-to-multipoint FS operations in the band? The Commission seeks comment on subjecting point-to-multipoint FS applicants to an expedited coordination process with mandatory electronic notification and response. Should an expedited process, if adopted, govern coordination that occurs beginning 90 days after the adoption of final rules published in the **Federal Register**? The Commission also seeks comment on any other modifications to the Commission's rules with respect to the coordination administrative process that would reduce the economic impact of the proposed rule changes on small entities.

98. Additionally, the Commission seeks comment on the possibility of adopting an automated coordination process for point-to-multipoint FS applications. There is a lack of a consensus in the record as to when, or if, the Commission will be in a position to propose and adopt rules for automated coordination of point-to-multipoint FS applications in the 3.7–4.2 GHz band. The Broadband Access Coalition contends that automated coordination should not be the same as the Spectrum Allocation Server (SAS) system for licensing in the 3.5 GHz band. However, the Broadband Access Coalition believes that the existing process can be modified and automated over time to incorporate real-time, real-world FSS protection criteria and enable coordination between and among point-to-point FS, if grandfathered or remain in the band, and point-to-multipoint FS based on FSS, point-to-point FS and point-to-multipoint FS industry standards of protection criteria to be developed by affected stake-holders. Several commenters including IEE DySPAN, OTI &PK, and Federated, support using a spectrum access database similar to the sharing system used below 3.7 GHz for the Citizens Broadband Radio Service. Google offers another variant contending that a lightweight database supported authorization framework would enable the efficient deployment of fixed broadband access (FBA) systems. However, the satellite industry and content providers have strong objections to more intensive use of the 3.7–4.2 GHz by FS and have raised very specific concerns over the lack of proven methods for spectrum sharing with more intensive fixed use in this band. Satellite operators also raise concern about the ability of point-to-multipoint systems to quickly remedy interference when it is identified or to accommodate FSS earth stations when they change frequencies. The Commission seeks comment on the above. The Commission also asks that, given the lack of consensus, parties continue to work together to offer a more widely supported proposal for the Commission to consider.

99. *Power Limits.*—The Commission seeks comment on adopting power limits for point-to-multipoint FS operations in the 3.7–4.2 GHz band. The Commission existing rules for FS provide power limits based on the link length. With point-to-multipoint FS service areas, individual links between access points and client devices will vary in length. Should the Commission apply a rule to point-to-multipoint FS links specifying a minimum path length, similar to those specified for point-to-point FS links in § 101.143 or is some other variation of this rule more applicable to point-to-multipoint FS operations? What should the Commission's power limits be for point-to-multipoint FS service? The Broadband Access Coalition has proposed a 50 dBm EIRP limit and a maximum conducted power of 1 Watt. Should the access point EIRP be scalable with bandwidth? Likewise, should client devices be limited to 50 dBm EIRP regardless of bandwidth? If not scalable, how do changes in bandwidth impact frequency coordination? Should the Commission apply the emission limits set forth in § 101.111 to point-to-multipoint FS operations in this band, or would some other limits be more appropriate to protect adjacent-band operations? The Broadband Access Coalition anticipates that point-to-multipoint FS systems would be able to meet existing Part 101 out-of-band emission limits, without modification, but the Commission seeks comment as to this issue. The Commission also invites comment on other proposals. The Commission notes that the adjacent 4.2–4.4 GHz band is allocated to the aeronautical radionavigation service on a primary basis and that, at WRC–15, the 4.2–4.4 GHz band was also allocated to the aeronautical mobile (R) service on a primary basis in all ITU Regions with use reserved for WAIC systems. WAIC systems are onboard short range wireless systems that will replace substantial portions of aircraft wiring. These systems increase aircraft safety by providing dissimilar redundancy in communications links between aircraft systems. The Commission solicits comment on the needed out-of-band emission limit required to protect the

aeronautical radionavigation service in the 4.2–4.4 GHz band.

100. *Antenna Standards.*—The Commission asks parties to provide detailed technical comments as to antenna standards that should apply to point-to-multipoint FS operations in the 3.7–4.2 GHz band. Section 101.115 of the Commission's rules specifies the maximum beamwidth, minimum antenna gain and radiation suppression envelope for FS antennas in this band. How should these antenna standards be modified to accommodate the range of antennas typically used in point-to-multipoint applications? The Broadband Access Coalition Petition proposes that, unlike point-to-point FS licensees subject to § 101.115, point-to-multipoint FS licensees be permitted to use any antenna in the 3.7–4.2 GHz band that meets the minimum performance requirements for access points and client devices. Specifically, the Broadband Access Coalition Petition proposes that a point-to-multipoint FS licensee would be required to specify the gain; azimuth; polarization; height; azimuth and elevation half-power beamwidths; and tilt (*e.g.,* −10 degrees) for sectorized antennas and gain, height and any electrical tilt for omni-directional antennas. Should the Commission specify a minimum radiation suppression at some angle from the edge of the main beam for sectorized antennas? The Commission seeks comment on the above and invite parties to offer alternative proposals. What are the relative costs and benefits for each proposal? How would each proposal affect other users in the band or provide mechanisms to address interference?

101. *Client Devices.*—The Commission seeks comment on whether the Commission should require directional antennas on outdoor point-to-multipoint client devices and if so what should those antenna standards be? Would antenna standards for client devices make coordination easier? The Commission asks that commenters address the minimum antenna gain and minimum suppression from main beam centerline. Should client devices be limited to outdoor antennas only and permanently affixed at the client location? Should the Commission allow portable indoor client devices, and should such devices be allowed under point-to-multipoint or flexible use rules? If the Commission permits portable client devices with non-directional antennas, how will this impact the access point service area frequency coordination with incumbent licensees?

102. *Frequency Agility and Radio Capabilities.*—The Commission seeks comment on whether the Commission should require point-to-multipoint FS radios (both access points and client devices) to be frequency agile and thus capable of operating across the 3.7–4.2 GHz band or allow radios to be agile over 3.7–4.2 GHz so long as the flexible use portion of the band is locked out and be able to accommodate any 20 megahertz channel assignment? The Broadband Access Coalition requests that licensed point-to-multipoint radios (both access points and client devices) be frequency agile and thus capable of operating across the entire 3.7–4.2 GHz band, and accommodate any 20 megahertz channel assignment. Additionally, should the Commission require that client devices be capable of modifying channel and bandwidth assignment when prompted by the associated access point? Should access points be software upgradable to communicate with future automated database and client devices to be capable of following instructions from associated access point to change channels and bandwidth, as necessary? The Commission seeks comment on how such requirements might be implemented in regulations, or whether any such features may instead be developed by manufacturer technical standards and/or multi-stakeholder interest groups.

103. *Construction.*—The Commission seeks comment on the construction deadlines and notifications that should apply to point-to-multipoint FS licensees in the 3.7–4.2 GHz band. Should the Commission require point-to-multipoint FS licensees to build out, within 12 months, and operate at least one access point and at least five client radios in licensed areas or lose protection for the service area? If a point-to-multipoint FS licensee fails to meet the above requirements, should the Commission allow links already in service from that access point to maintain coordinated protection on an individual, path-by-path basis to protect existing customers served by those links? In addition, the Commission encourages commenters to consider the economic impact on consumers and businesses in rural communities and areas that are unserved or underserved by current broadband providers, as well as any economic impact on small businesses. The Commission asks parties to comment on this proposal, offer alternative proposals, and discuss the relative costs and benefits for each proposal.

104. Additionally, § 101.141(a)(3)(ii) requires that ''traffic loading payload shall exceed 50 percent of payload capacity within 30 months of licensing.'' The Commission recognizes that the minimum traffic loading payload requirement in § 101.141(a)(3)(ii) was designed for symmetrical traffic and that IP traffic is often asymmetrical. Should the Commission therefore not adopt a requirement for point-to-multipoint FS licensees or do parties have alternative proposals for us to consider?

105. *Equipment Access/RF Exposure.*—Section 101.131(a) requires that ''[t]he equipment at the operating and transmitting positions must be so installed and protected that it is not accessible to, or capable of being operated by, persons other than those duly authorized by the licensee.'' The Broadband Access Coalition states that client radios providing low power point-to-multipoint services will operate from residential premises and will not present a radiofrequency (RF) hazard because, when operated at full power, the RF exposure keep-out zone for point-to-multipoint client radios operating at the proposed maximum EIRP level is less than 0.6 meters (2 feet). The Commission anticipates that client devices would likely be mounted in such a way as to provide a good connection back to the access point, free from obstructions within the transmission path, and so while such an installation may not strictly comply with the access restriction requirement in the Commission's rules, it is possible that other regulatory examples or analogies may apply to point-to-multipoint situations where home subscriber devices are involved. For example, fixed wireless licensees with home-installed consumer equipment are generally required to attach a label to transceiver antennas that: (1) Provides adequate notice regarding potential radiofrequency safety hazards, *e.g.,* information regarding the safe minimum separation distance required between users and transceiver antennas; and (2) references the applicable FCC-adopted limits for radiofrequency exposure specified in § 1.1310. The Commission seeks comment on whether a similar requirement for point-to-multipoint client devices may be a preferred alternative to § 101.1310 of the Commission's rules. In addition, the Commission seeks comment on the possibility that there may be any other potential use cases, such as wireless routers or other types of devices, that may require separate consideration for the purposes of equipment authorization and RF exposure compliance. The Commission notes that

all transmitters must comply with the Commission's exposure limits and requirements of §§ 1.1307(b), 1.1310, 2.1091, and 2.1093 of the Commission's rules, as applicable.

106. *ULS Requirements.*—What technical data should point-to-multipoint FS licensees be required to provide in ULS? The Commission notes that the Broadband Access Coalition requests in its petition that the applicant's frequency coordination should correspond to the specific equipment and antenna orientation the applicant selects, and so the Commission seeks comment on whether at least that same information used for frequency coordination should be entered into the Commission's licensing database. At a minimum should licensees be required to provide the antenna gain, azimuth, polarization, height, half-power beamwidth (azimuth and elevation), and tilt (*e.g.* −10°) for each access point by sector?

3. Service Rules for Flexible Use

107. The scope of the service rules adopted herein will vary depending on the mechanism ultimately adopted by the Commission to expand flexible use in the band. For convenience, the Commission refers to this indeterminate amount of spectrum as the Mid-Band Flexible Use or ''MBX'' spectrum. Assuming that the Commission ultimately decides to add a mobile, except aeronautical mobile, allocation and to make some or all of the 3.7–4.2 GHz band available for flexible use, in this section the Commission proposes or seeks comment on band plan, licensing and operating and technical rules for the 3.7–4.2 GHz band spectrum that becomes available for terrestrial mobile and fixed flexible-use. The Commission proposes to license this spectrum under the Commission's flexible-use, part-27 rules that permit licensees to provide any fixed or mobile service consistent with the allocations for this spectrum, subject to rules necessary to prevent or minimize harmful interference. The Commission seeks comment on this approach. The Commission also seeks comment, however, on whether there are any services, *e.g.,* Internet of Things, that would not qualify under § 603(a)(2)(B) of the MOBILE NOW Act, which requires the Commission to identify 100 megahertz below 6000 MHz for use on exclusive, licensed basis for commercial mobile use, pursuant to the Commission's authority to implement such licensing in a flexible manner?

a. Band Plan

108. *Block Sizes.*—The Commission seeks comment on appropriate block size to promote efficient and robust use of the band for next generation wireless technologies, including 5G. Currently, the 3.7–4.2 GHz band is licensed terrestrially by 20 megahertz channels for fixed use. However, the current channelization of the band should not affect the Commission's consideration of alternate band plans. Therefore, the Commission seeks comment on the appropriate block size(s) to best accommodate the fullest range of terrestrial wireless services.[14] Would 20 megahertz blocks be appropriate for the wireless technologies that are likely to be deployed in this band? Should the Commission allow blocks to be aggregated to provide greater capacity where needed? Or, would licensing the 3.7–4.2 GHz band in larger block sizes (*e.g.,* 50–100 megahertz) better support 5G services while promoting competition? Would a mix of channel sizes improve efficiency and flexibility for a wider variety of users in the band?

109. The Commission also seeks comment on whether the appropriate block sizes should be affected by the specific transition mechanism adopted by the Commission. For example, if the Commission adopts a market-based approach, the Commission seeks comment on allowing parties to define block sizes in their agreements. In this regard, would a default block size that could be aggregated and disaggregated help facilitate a market-based process? Commenters should discuss and quantify the costs and benefits of their proposals.

110. *Spectrum Block Configuration.*—The Commission generally has licensed bands that support mobile broadband services on a paired basis but specified the downlink and uplink bands only when necessary to avoid harmful interference, *e.g.,* to Federal incumbents. The Commission recognizes that the 3.7–4.2 GHz spectrum that becomes available for flexible use could be configured in any number of paired or unpaired modes. The Commission therefore seeks comment on a range of options. If the Commission adopts an unpaired approach, are any administrative measures necessary to keep track of how spectrum blocks are being used? The Commission invites comment on what approach to take, and the costs and benefits of particular approaches. Above, the Commission discusses various mechanisms for expanding flexible use in all or part of the band. The Commission asks proponents of the various approaches described whether there are issues specific to this section and their preferred approach.

111. *Use of Geographic Licensing.*—Consistent with the Commission's approach in several other bands used to provide fixed and mobile services, the Commission proposes to license the 3.7–4.2 GHz MBX spectrum on an exclusive, geographic area basis. Geographic area licensing provides flexibility to licensees, promotes efficient spectrum use, and helps facilitate rapid assignment of licenses, utilizing competitive bidding when necessary. The Commission seeks comment on this approach, including the costs and benefits of adopting a geographic area licensing scheme. In the event that a party does not support using geographic licensing, it should explain its position, describe what type of licensing scheme it supports and identify the costs and benefits associated with its alternative licensing proposal.

112. *Service Areas.*—The Commission seeks comment on the appropriate service areas for any flexible use licenses. In determining the appropriate geographic license size, the Commission must consider several factors, including: (1) Facilitating access to spectrum by both small and large providers; (2) providing for the efficient use of spectrum; (3) encouraging deployment of wireless broadband services to consumers, especially those in rural areas and Tribal lands; and (4) promoting investment in and rapid deployment of new technologies and services. In light of these statutory considerations, the Commission asks commenters to discuss and quantify the economic, technical, and other public interest considerations of licensing on a PEA, county, nationwide, or other basis. The Commission asks commenters to address the costs and benefits of their recommended licensing approach.

113. The Commission also seeks comment on a licensing approach for the Gulf of Mexico. In AWS–1, AWS–3, AWS–4, and the H Block, the Commission issued separate licenses for the Gulf of Mexico. In the Upper 700 MHz band, however, the Commission included the Gulf of Mexico in larger service areas. Commenters who advocate a separate service area or areas to cover the Gulf of Mexico should discuss what boundaries should be used, and whether special interference protection criteria or performance requirements are necessary due to the unique radio propagation characteristics and antenna siting challenges that exist for Gulf licensees.

[14] The use of 20 megahertz blocks will enable transmission efficiencies achieved by 5G voluntary standards, including Long-Term Evolution (''LTE'') derivatives. Vivint Wireless Comments at 3.

114. The Commission also seeks comment on whether the service areas should be affected by the specific transition mechanism adopted by the Commission. For example, if the Commission adopts a market-based approach, the Commission seeks comment on allowing parties to define service areas in their agreements. In this regard, would a default service-area size smaller than the contiguous 48 states that could be aggregated and disaggregated help facilitate a market-based process? If the Commission adopts an overlay auction, the Commission seeks comment on issuing a single nationwide license, or alternatively issuing licenses for five regions: (1) The contiguous 48 states and the Gulf of Mexico, (2) Alaska, (3) Hawaii, (4) Puerto Rico and the U.S. Virgin Islands, and (5) Guam, the Northern Mariana Islands, and American Samoa. Commenters should discuss and quantify the costs and benefits of their proposals.

115. The Commission also seeks comment on a licensing approach for the Gulf of Mexico. In AWS–1, AWS–3, AWS–4, and the H Block, the Commission issued separate licenses for the Gulf of Mexico. In the Upper 700 MHz band, however, the Commission included the Gulf of Mexico in larger service areas. Commenters who advocate a separate service area or areas to cover the Gulf of Mexico should discuss what boundaries should be used, and whether special interference protection criteria or performance requirements are necessary due to the unique radio propagation characteristics and antenna siting challenges that exist for Gulf licensees.

b. Licensing and Operating Rules

116. The Commission seeks to afford licensees the flexibility to align licenses in the 3.7–4.2 GHz band with licenses in other spectrum bands governed by Part 27 of the Commission's rules. The Commission therefore proposes that licensees in the 3.7–4.2 GHz band comply with licensing and operating rules that are applicable to all Part 27 services, including assignment of licenses by competitive bidding, flexible use, regulatory status, foreign ownership reporting, compliance with construction requirements, renewal criteria, permanent discontinuance of operations, partitioning and disaggregation, and spectrum leasing. The Commission seeks comment on this approach and ask commenters to identify any aspects of the Commission's general Part 27 service rules that should be modified to accommodate the particular characteristics of the 3.7–4.2 GHz band. The Commission asks proponents of the various mechanisms described above whether there are issues specific to this section and their preferred approach.

117. In addition, the Commission seeks comment on service-specific rules for the 3.7–4.2 GHz band, including eligibility, mobile spectrum holdings policies, license term, performance requirements, renewal term construction obligations, and other licensing and operating rules. In addressing these issues, commenters should discuss the costs and benefits associated with these proposals and any alternatives that commenters propose.

118. *Eligibility.*—Consistent with established Commission practice, the Commission proposes to adopt an open eligibility standard for licenses in the 3.7–4.2 GHz band. The Commission seeks comment on this approach. Specifically, the Commission seeks comment on whether adopting an open eligibility standard for the licensing of the 3.7–4.2 GHz band would encourage efforts to develop new technologies, products, and services, while helping to ensure efficient use of this spectrum. The Commission notes that an open eligibility approach would not affect citizenship, character, or other generally applicable qualifications that may apply under the Commission's rules. Commenters should discuss the costs and benefits of the open eligibility proposal on competition, innovation, and investment. Above, the Commission discusses various mechanisms for expanding flexible use in all or part of the band. The Commission asks proponents of the various approaches described above whether there are issues specific to this section and their preferred approach. Finally, a person who has been, for reasons of national security, barred by any agency of the Federal Government from bidding on a contract, participating in an auction, or receiving a grant is ineligible to hold a license that is required by 47 U.S.C. Chapter 13 (the Spectrum Act) to be assigned by a system of competitive bidding under § 309(j) of the Communications Act. In the event that the Commission assigns licenses through competitive bidding, the Commission proposes to apply this ineligibility provision to the 3.7–4.2 GHz band.

119. *Mobile Spectrum Holdings.*—Spectrum is an essential input for the provision of mobile wireless services, and to implement provisions of the Communications Act, the Commission has developed policies to ensure that spectrum is assigned in a manner that promotes competition, innovation, and efficient use.

120. The Commission seeks comment generally on whether and how to address any mobile spectrum holdings issues involving 3.7–4.2 GHz spectrum to meet the Commission's statutory requirements and ensure competitive access to the band. Similar to the Commission's approach in the *2017 Spectrum Frontiers Order and FNPRM,* the Commission proposes not to adopt a pre-auction bright-line limit on the ability of any entity to acquire spectrum in the 3.7–4.2 GHz band through competitive bidding at auction. Since such pre-auction limits may unnecessarily restrict the ability of entities to participate in and acquire spectrum in an auction, the Commission is not inclined to adopt such limits absent a clear indication that they are necessary to address a specific competitive concern, and the Commission seeks comment on any specific concerns of this type.

121. The Commission also seeks comment on whether this band should be included in the Commission's spectrum screen, which helps to identify markets that may warrant further competitive analysis, for evaluating proposed secondary market transactions. If the Commission does determine that an auction is appropriate, the Commission seeks comment on reviewing holdings on a case-by-case basis when applications for initial licenses are filed post-auction to ensure that the public interest benefits of having a threshold on spectrum applicable to secondary market transactions are not rendered ineffective. The Commission seeks comment on whether and how the similarity of this spectrum to spectrum currently included in the screen should be factored into the Commission's analysis, including the suitability of 3.7–4.2 GHz spectrum for use in the provision of mobile telephony or broadband services. Commenters should discuss and quantify any costs and benefits associated with any proposals on the applicability of mobile spectrum holdings policies to 3.7–4.2 GHz spectrum. The Commission discusses above various mechanisms for expanding flexible use in all or part of the band. The Commission asks proponents of the various approaches described above whether there are issues specific to this section and their preferred approach. For example, should the Commission impose limits on the amount of spectrum acquired by one party through a market-based mechanism?

122. *License term.*—The Commission seeks comment on a 15-year term for licenses in the 3.7–4.2 GHz band.[15] The Commission believes that 15 years will afford licensees sufficient time to achieve this significant buildout obligation. The Commission seeks comment on the costs and benefits of this proposal. In addition, the Commission invites commenters to submit alternate proposals for the appropriate license term, which should similarly include a discussion on the costs and benefits.

123. *Performance requirements.*—The Commission establishes performance requirements to ensure that spectrum is intensely and efficiently utilized. The Commission has applied different performance and construction requirements to different spectrum bands based on considerations relevant to those bands. The Commission continues to believe that performance requirements play a critical role in ensuring that licensed spectrum does not lie fallow.

124. Accordingly, considering the unique characteristics of this band, and to ensure that licensees begin providing service to consumers in a timely manner, the Commission seeks comment on adopting specific quantifiable benchmarks as an important component of its performance requirements. The Commission seeks comment on requiring a 3.7–4.2 GHz band licensee, relying on mobile or point-to-multipoint service in accordance with the Commission's part 27 rules, to provide reliable signal coverage and offer service to at least forty-five (45) percent of the population in each of its license areas within six years of the license issue date (first performance benchmark), and to at least eighty (80) percent of the population in each of its license areas within 12 years from the license issue date (second performance benchmark). For licensees relying on point-to-point service, the Commission seeks comment on requiring them to demonstrate within six years of the license issue date (first performance benchmark) that they have four links operating and providing service, either to customers or for internal use, if the population within the license area is equal to or less than 268,000. If the population within the license area is greater than 268,000, the Commission seeks comment on requiring a licensee relying on point-to-point service to demonstrate it has at least one link in operation and providing service per every 67,000 persons within a license area. The Commission seeks comment on requiring licensees relying on point-to-point service to demonstrate within 12 years of the license issue date (final performance benchmark) that they have eight links operating and providing service, either to customers or for internal use, if the population within the license area is equal to or less than 268,000. If the population within the license area is greater than 268,000, the Commission seeks comment on requiring a licensee relying on point-to-point service to demonstrate it is providing service and has at least two links in operation per every 67,000 persons within a license area. The Commission seeks comment on whether in order to be eligible to be counted under the point-to-point buildout standard, a point-to-point link must operate with a transmit power greater than + 43 dBm.[16]

125. The Commission believes that 12 years will provide sufficient time for any 3.7–4.2 GHz licensee to meet the proposed coverage requirements. The Commission anticipates that after satisfying the 12-year second performance benchmark, a licensee will continue to provide reliable signal coverage, or point-to-point links, as applicable, and offer service at or above that level for the remaining three years in the proposed 15-year license term prior to renewal. Establishing benchmarks before the end of the license term will ensure continuity of service over the license term, which is essential to the Commission's evaluation under the Commission's renewal standards.

126. The Commission also seeks comment on whether the proposals discussed above represent the appropriate balance between license-term length and a significant final buildout requirement. The Commission seeks comment on the proposed buildout requirements and any potential alternatives. The Commission, for example, seeks comment on alternative methodologies for measuring population coverage requirements in the Gulf of Mexico. Above, the Commission discusses various mechanisms for expanding flexible use in all or part of the band. The Commission asks proponents of the various approaches described above whether there are issues specific to this section and their preferred approach. The Commission also seeks comment on whether small entities face any special or unique issues with respect to buildout requirements such that they would require certain accommodations or additional time to comply. Finally, commenters should discuss and quantify how any supported buildout requirements will affect investment and innovation, as well as discuss and quantify other costs and benefits associated with the proposal.

127. *Internet of Things (IoT) Performance Requirements.*—While the Commission proposes performance benchmarks based on population coverage applicable for a range of fixed and mobile services, the Commission recognizes that 3.7–4.2 GHz licenses have flexibility to provide services potentially less suited to a population coverage metric. In particular, licensees providing IoT-type fixed and mobile services may benefit from an alternative performance benchmark metric, and the Commission seeks comment on the appropriate metric to accommodate such service offerings. As the Commission did in *Spectrum Frontiers,* the Commission acknowledges that some IoT-type services may have difficulty meeting the population-based metrics that the Commission proposes for fixed and mobile services. In *Spectrum Frontiers,* the Commission modified its existing part 30 rules to adopt a specific definition of ''fixed point-to-point link,'' which includes the use of point-to-point stations as already defined in part 30 and is based on power level. This definition is intended to separate ''traditional'' point-to-point links from the sensor and device connections the Commission anticipates will be part of new Internet of Things networks in these bands. This definition applies to a network of fixed sensors or smart devices operating at low power over short distances. The Commission seeks comment on applying the same framework here and invite commenters to suggest new metrics that will accommodate innovative services in mid-band spectrum. The Commission also seeks comment on how relatively lower power point-to-point operations at or below a transmit power of + 43 dBm should be required to meet the buildout rules for 3.7–4.2 GHz licensees.

[15] The Communications Act does not specify a term limit for wireless radio services licenses. The only statutory limit on license terms is eight years for licenses in the broadcast services. *See* 47 U.S.C. 307(c)(1); *see also* 47 CFR 73.1020(a).

[16] In *Spectrum Frontiers,* the Commission defined a ''fixed point-to-point link'' as ''a radio transmission between point-to-point stations (as already defined in part 30), where transmit power exceeds + 43 dBm.'' Under this definition, stations or devices transmitting using lower power levels will not count towards the number of fixed links required under the performance metric. Licensees whose networks include such low-power connections may rely on another part of their network to demonstrate buildout (*e.g.,* mobile area coverage or higher-power fixed backhaul links). *See 2017 Spectrum Frontiers Order and FNPRM,* 32 FCC Rcd at 11008–09, paragraph 66 through 68.

128. The Commission seeks additional comment on what metric it should adopt to accommodate IoT services, while recognizing the difficulty of crafting an IoT-specific metric, especially while the relevant technologies and use cases are still being developed. For example, a performance metric based on geographic area coverage (or presence) could allow for networks that provide meaningful service but deploy along lines other than residential population. Consistent with the Commission's approach above seeking comment on a first and second performance benchmark, the Commission seeks comment on the following metrics as an option for MBX-spectrum licensees to fulfill their buildout requirements: geographic area coverage of 35 percent of the license area at the first (six-year) performance benchmark, and geographic area coverage of 65 percent of the license area at the second (12-year) performance benchmark. The Commission also seeks comment on an alternative requirement of presence in 35 percent of subset units of the license area, such as census tracts, counties, or some other area at the first performance benchmark, and presence in 65 percent of subset units at the second benchmark. A standard requiring presence in subset units of a license area could accommodate deployments, such as sensor networks, that are not designed to provide mobile or point-to-multipoint area coverage, and for whom calculating ''coverage of 65 percent of the area'' would therefore not be a meaningful standard. Licensees would demonstrate compliance with this metric through a showing of the equipment or deployments that are part of a network that is actually providing service, either to external customers or for internal uses.

129. The Commission suggests these levels of geographic coverage as an attempt to maintain parity between the requirements in these metrics and the requirements of its earlier proposal based on population coverage.[17] The Commission seeks comment on these coverage levels, including any suggestions of alternative levels of coverage that might be more appropriate. The Commission also emphasizes that any metric it adopts to accommodate IoT services would, like the population coverage and fixed link metrics ultimately adopted, be available to any MBX-spectrum licensee. While the Commission suggests an additional metric in order to facilitate the deployment of IoT and other innovative services, there would be no requirement that a licensee build a particular type of network or provide a particular type of service in order to use whatever metric the Commission ultimately adopts. Above, the Commission discusses various mechanisms for expanding flexible use in all or part of the band. The Commission asks proponents of the various approaches described above whether there are issues specific to this section and their preferred approach. The Commission strongly encourages stakeholders to fully develop a record on this issue.

130. *Penalty for Failure to Meet Performance Requirements.*—Along with performance benchmarks, the Commission seeks to adopt meaningful and enforceable penalties for failing to meet the benchmarks. The Commission seeks comment on which penalties will most effectively ensure timely build-out. Specifically, the Commission proposes that, in the event a 3.7–4.2 GHz MHz licensee fails to meet the first performance benchmark, the licensee's second benchmark and license term would be reduced by two years, thereby requiring it to meet the second performance benchmark two years sooner (at 10 years into the license term) and reducing its license term to 13 years. The Commission further proposes that, in the event a 3.7–4.2 GHz licensee fails to meet the second performance benchmark for a particular license area, its authorization for each license area in which it fails to meet the performance requirement shall terminate automatically without Commission action.

131. The Commission proposes that, in the event a licensee's authority to operate terminates, the licensee's spectrum rights would become available for reassignment pursuant to the competitive bidding provisions of § 309(j). Further, consistent with the Commission's rules for other licenses, including AWS–1, AWS–3, AWS–4 and H Block, the Commission proposes that any 3.7–4.2 GHz licensee who forfeits its license for failure to meet its performance requirements would be precluded from regaining the license.

132. *Compliance Procedures.*—In addition to compliance procedures applicable to all Part 27 licensees, including the filing of electronic coverage maps and supporting documentation, the Commission proposes that such electronic coverage maps must accurately depict the boundaries of each license area in the licensee's service territory. If a licensee does not provide reliable signal coverage to an entire license area, the Commission proposes that its map must accurately depict the boundaries of the area or areas within each license area not being served. Further, the Commission proposes that each licensee also must file supporting documentation certifying the type of service it is providing for each licensed area within its service territory and the type of technology used to provide such service. Supporting documentation must include the assumptions used to create the coverage maps, including the propagation model and the signal strength necessary to provide reliable service with the licensee's technology. The Commission seeks comment on the Commission's proposal. The Commission also seeks comment on whether small entities face any special or unique issues with respect to the transition such that they would require additional time to comply.

133. *Renewal Term Construction Obligation.*—In addition to, and independent of, the general renewal requirements contained in § 1.949 of the Commission's rules, which apply to all Wireless Radio Services (WRS) licensees, the Commission also seeks comment on application of specific renewal term construction obligations to 3.7–4.2 GHz licensees.

134. The *WRS Renewal Reform FNPRM* proposed to apply rules adopted in that proceeding to all flexible geographic licenses. Given the Commission's proposal to license this band on a geographic basis for flexible use, any additional renewal term construction obligations proposed in the *WRS Renewal Reform FNPRM* also would apply to licenses in the 3.7–4.2 GHz band. The Commission seeks comment on whether there are unique characteristics of the 3.7–4.2 GHz band that might require a different approach than the various proposals raised by the *WRS Renewal Reform FNPRM.* For example, while the vast majority of existing wireless radio services have 10-year license terms, here the Commission seeks comment on a 15-year license term for the 3.7–4.2 GHz band. Do any of the Commission's proposals for this band, such as potentially longer license terms, necessitate a more tailored approach than the rules of general applicability proposed in the *WRS Renewal Reform FNPRM*? For instance, should the Commission requires buildout to 85 percent of the population by the end of second license term? Commenters advocating rules specific to the 3.7–4.2 GHz band should address the costs and benefits of their proposed

[17] In most license areas, the residential population is unevenly distributed. In those areas, building a network covering 65% of the geographic area would require more intensive deployment than one covering 65% of the population, suggesting that a lower percent coverage requirement for geographic area could be appropriate.

rules and discuss how a given proposal will encourage investment and deployment in areas that might not otherwise benefit from significant wireless coverage. Above, the Commission discusses various mechanisms for expanding flexible use in all or part of the band. The Commission asks proponents of the various approaches described above whether there are issues specific to this section and their preferred approach. The Commission seeks comment on whether to require an applicant deploying IoT applications in the 3.7–4.2 GHz band to exceed its original construction metric by an additional five percent in its next full renewal term.

135. *Competitive Bidding Procedures.*— The Commission seeks comment above on the types of licenses for the 3.7–4.2 GHz band that would best serve the public interest. In the event that the Commission accepts mutually exclusive applications for licenses in the band, the Commission will grant the licenses through a system of competitive bidding, consistent with the Commission's statutory mandate. Accordingly, the Commission seeks comment on a number of proposals relating to competitive bidding for licenses for spectrum in this band, including the costs and benefits of those proposals.

136. Consistent with the competitive bidding procedures the Commission has used in previous auctions, the Commission proposes that the Commission would conduct any auction for licenses for spectrum in the 3.7–4.2 GHz band in conformity with the general competitive bidding rules set forth in part 1, subpart Q, of the Commission's rules. Specifically, the Commission proposes to employ the part 1 rules governing competitive bidding design, designated entity preferences, unjust enrichment, application and certification procedures, payment procedures, reporting requirements, and the prohibition on certain communications between auction applicants. Under this proposal, such rules would be subject to any modifications that the Commission may adopt for its part 1 general competitive bidding rules in the future. In this *NPRM,* the Commission seeks comment on general application of the part 1 competitive bidding rules to any auction of 3.7–4.2 GHz licenses. The Commission also seeks comment on whether any of the Commission's part 1 rules would be inappropriate or should be modified for an auction of licenses in this frequency band. In particular, the Commission seeks comment on the following proposals for bidding credits for designated entities in this band. As with other flexible use licenses in recent years, the Commission proposes in this band to adopt bidding credits for the two larger designated entity business sizes provided in the part 1 rules. The Commission also proposes to offer rural service providers a designated entity bidding credit for licenses in this band. Commenters addressing these proposals should consider what details of licenses in the band may affect whether designated entities will apply for them. The Commission seeks comment on new or revised rules that would be necessary to implement an incentive auction if the Commission adopted that approach. Would a tailored version of the rules adopted for the reverse auction portion of the broadcast incentive auction be appropriate?

c. Technical Rules

137. *Power Limits for Fixed and Base Stations.*—The current rules for AWS–1, AWS–3 and AWS–4 limit base station power in non-rural areas to 1640 watts EIRP for emission bandwidths less than one megahertz and to 1640 watts per MHz EIRP for emission bandwidths greater than one megahertz and they double these limits (3280 watts EIRP or 3280 watts/MHz) in rural areas. The same limits apply to broadband PCS stations. There are a few services that have a power limit of 2000 Watts per MHz, most notably, the recent 600 MHz band. In the Commission's experience the AWS limits have provided good service while avoiding harmful interference. Further, the higher power limit for rural areas may promote the Commission's goals of furthering rural deployment of broadband services. Therefore, the Commission proposes to extend § 27.50(d)(1)–(2) to apply to both fixed and base stations in the 3.7–4.2 GHz MBX-spectrum. Thus, the power limits are proposed to be 1640 watts EIRP for emission bandwidths less than one megahertz and to 1640 watts per MHz EIRP for emission bandwidths greater than one megahertz. For operation in rural areas, defined as any county with population density of 100 or fewer persons per square mile, based upon the most recently available population statistics from the Bureau of the Census, the power limits are proposed to be 3280 watts EIRP for emission bandwidths less than one megahertz and to 3280 watts per MHz EIRP for emission bandwidths greater than one megahertz. These power limits apply to the sum of the power of all antenna elements of the fixed or base station. The Commission seeks comment on this proposal. Are the power levels the Commission proposes sufficient to provide robust mobile broadband service as well as being practical and realistic in this particular spectrum? Alternatively, would the proposed power levels need to be reduced to avoid the blocking of receivers operating in the adjacent Citizen's Broadband Radio Service at 3.5–3.7 GHz? The Commission invites commenters who propose alternative solutions to provide specific technical details and thorough analysis to support their proposals.

138. It is anticipated that this new band may be able to accommodate much wider channel bandwidths than in the past. Current plans for 5G deployments are capable of channel bandwidths of as much as 100 MHz at frequencies below 6 GHz. There is some concern regarding the total power of a wide bandwidth channel when the power limit is specified as a power density level. Should the Commission propose a limit on the total power of a base station in order to relieve potential blocking? One possible solution is that the total power of a base station should be limited to 75 dBm EIRP, summed over all antenna elements, for fixed and base stations. The Commission seeks comment on this proposal.

139. The Commission notes that the power limit for most AWS services is specified based on an RMS-equivalent or average power measurement. This power measurement methodology is preferred for advanced digital modulation schemes that could create very short duration power spikes, while the overall power remains low. There are a few services whose power limit is specified based on a peak power measurement. The Commission proposes that the power limit be based on the average power measurement and seek comment on this proposal.

140. *Power Limits for Mobiles and Portables.*—The Commission proposes to limit the power of mobiles and portables in the 3.7–4.2 GHz MBX spectrum to 1 Watt (30 dBm). While power limits for flexible use mobile services vary in the Commission's rules (*e.g.,* 50 milliwatts per MHz EIRP for WCS, 2 Watts EIRP for PCS, 3 Watts ERP in the 600 MHz band, 1 Watt EIRP for the AWS–1 and AWS–3 uplink bands, and 2 Watts EIRP for the AWS–4 uplink band); most device operate at levels under 1 Watt to preserve battery life, meet exposure limits and meet power control requirements. The limit the Commission proposes falls within a range of values typically seen in AWS services, and should provide adequate power for the 5G mobile applications envisioned for the MBX spectrum

considering the similarity in propagation characteristics for the MBX-spectrum band and AWS bands. Indeed, most commercial services, including LTE, CDMA and UMTS, commonly deploy mobile devices which operate at a maximum output power of 23 dBm (200 milliwatts), regardless of higher FCC power limits. However, there are a few new power class II LTE devices being developed with slightly higher output power of 26 dBm. Similar devices are expected for the new 5G standard as well. This development warrants continued flexibility in the rules to allow for a wider range of devices types. The Commission seeks comment on this proposal. The Commission further proposes that mobile and portable stations operating in these bands must employ a means for limiting power to the minimum necessary for successful communications.

141. *Out of Band Emissions Limits.*—The limits the Commission sets on out of band emissions are important to protecting services in adjacent bands. This band is adjacent to the 3.5 GHz Citizens Broadband Radio Service and will also be adjacent to any service that remains in a portion of the 3.7–4.2 GHz FSS band after the Commission adopts and completes a transition plan. The Commission proposes that out of band emissions be kept to a level that will provide protection to incumbent services in adjacent bands, while allowing the full use of the new band. The Commission proposes to apply the longstanding limit on out of band emissions of −13 dBm/MHz at the authorized channel edge as measured at the antenna terminals. This out of band emission level has been used successfully to protect adjacent operations from harmful interference in several AWS bands. The Commission seeks comment on this proposal and whether to apply more stringent out of band emission limits beyond the band edge, as described below.

142. The out of band emission limits that the Commission adopts for the MBX spectrum will depend on the characteristics of the services likely to be deployed in the MBX spectrum and the coexistence needs of services in the adjacent bands. Notably, to ensure effective coexistence with adjacent band services, it may be necessary to adopt more stringent out of band emission limits beyond the edges of the band. For example, in the Citizens Broadband Radio Service, the Commission limits out of band emission to −25 dBm/MHz at or beyond 10 megahertz outside of the band edge and −40 dBm/MHz at or beyond 20 megahertz outside of the band edge. The Commission seeks comment on the out of band emission limits that will be needed to facilitate widespread deployment of next generation wireless services in the MBX spectrum while ensuring effective coexistence with the services operating in the adjacent bands. Commenters should analyze the costs and benefits of different options and provide detailed technical analysis in support of their proposals.

143. To fully define an emissions limit, the Commission's rules generally specify details on how to measure the power of the emissions, such as the resolution bandwidth. For most AWS bands, the resolution bandwidth used to determine compliance with this limit for base stations is one megahertz or greater, except that within one megahertz of the channel edge where a resolution bandwidth of at least one percent of the emission bandwidth of the fundamental emission of the transmitter may be employed. Rather than allow use of a bandwidth dependent resolution bandwidth near the channel edge, the Upper Microwave Flexible Use Service (UMFUS) rules under Part 30 instead specify use of a one megahertz resolution bandwidth but allow an out of band emission limit of −5 dBm per megahertz from the channel edge out to 10 percent of the channel. Considering that the MBX spectrum, like UMFUS, will likely employ much larger signal bandwidths than AWS, should the MBX spectrum rules adopt the AWS approach to defining the resolution bandwidth or follow the UMFUS approach?

144. Finally, should the same out of band emission limits apply to both base stations and mobile handsets? While the Commission finds that mobile handsets can meet the out of band emission limit the Commission has proposed, they also operate at lower power levels and their size could restrict the implementation of more stringent emission limits that would require nonstandard filtering. However, base station equipment may have more flexibility to implement more stringent filters if necessary to protect adjacent services. The Commission seeks comment on all aspects of the emission limits for mobile and portable devices as part of the discussion above.

145. *Coexistence with FSS Operations Above the MBX Spectrum.*—The Commission seeks comment on whether additional technical protection criteria, beyond out of band emission limits, are necessary to ensure effective coexistence with adjacent band FSS operations. As discussed above, several of the transition mechanisms under consideration could make available a portion of the 3.7–4.2 GHz band available for flexible use, while allowing continued widespread FSS operations in adjacent portions of the band. For example, under the proposal submitted by Intelsat and SES, the 3700–3800 MHz portion of the band would be initially cleared for flexible use along with an additional 40 to 60 megahertz of guard band adjacent to and above it. As part of the clearing process, Intelsat and SES have proposed to install a filter or replace the Low Noise Block converter (LNB) in every earth station so as to prevent 5G transmission in the 3700–3800 MHz from saturating the LNB of the earth stations. Intelsat and SES state that they are working with manufacturers to define the desired filter characteristics such as the rejection, roll-off, and insertion loss, but have not provided any specific numbers. The Commission seeks comment on whether such additional requirements are necessary to ensure coexistence with adjacent band operations.

146. In general, the width of the guard band and roll-off of the filter determine the amount of out-of-band rejection provided to a receiver. The Commission seeks comment on the earth station receiver protection criteria, necessary rejection performance from the external filter, and amount of spectrum it requires for the filter roll off. Should the protection limit of the FSS earth stations be based solely on interference-to-noise ratio (I/N) regardless of the actual FSS carrier power and/or earth station configuration? Should the Commission establish a baseline FSS earth station configuration (antenna, LNB, receiver) for any interference and protection assumptions? Given the signal strength differential between the terrestrial and satellite systems, can terrestrial wireless base or mobile stations cause saturation of the LNB of FSS earth stations? Could an external filter be tunable across 3700–4200 MHz band? Will there be a minimum distance separation required between MBX transmitters and earth station receivers? What are the tradeoffs among filter performance, required guard band, level of protection, and cost of such filter? The Commission requests commenters to provide details of assumptions and analysis including MBX transmit power level, earth station protection limit, propagation model, antenna aperture and off-axis isolation.

147. Alternatively, should the Commission define the MBX transmit power limit, out of band emission limits, and guard band and allow the satellite service providers to determine how to protect the earth station receivers? The Commission typically

does not specify receiver performance, and there are many variables that contribute to the receiver blocking performance from strong transmit signals in an adjacent band, including external filter, low-noise amplifier (LNA), mixer and other RF components, and digital signal processing in the baseband. Given the current design and operation of the earth stations, each earth station receiver may be impacted differently for a given MBX transmit power. Therefore, it may be more practical for satellite service providers to determine how to protect the earth station receivers given the allowed transmit power level and out of band emission limits. The Commission seeks comment on this proposal.

148. The guard band used for receiver filter rejection can also be used to enhance the out of band emission performance of MBX transmitters. The Commission seeks comment on the out of band emission limit necessary at the upper end of guard band in order to ensure coexistence with earth station receivers. Does this out of band emission limit allow ubiquitous operation of base stations and mobile stations or does it require a minimum distance separation from earth station receivers? The Commission requests commenters to include proposed out of band emission at the upper end of guard band, propagation model, antenna gains and off-axis isolation between MBX transmitters and earth station receivers in their analysis. The Commission also seeks comment on whether this guard band could be used for other purposes such as coordinated fixed point-to-multipoint operations, a low power wireless broadband system, indoor-only system, or unlicensed use.

149. *Coexistence with FSS Operations in the MBX Spectrum.* There may be some FSS earth stations operating co-channel with MBX, depending on the mechanisms of expanding flexible use as described above. The Commission seeks comment on the coexistence challenges between terrestrial mobile services and the FSS earth stations that may remain in the cleared spectrum and on any specific rules that should be adopted to ensure effective coexistence between these services. In other bands, the Commission has adopted exclusion or coordination zones to protect co-channel FSS earth stations from harmful interference. Would exclusion zones or coordination zones be appropriate to protect any existing FSS earth stations in the MBX spectrum? If so, how should the size of the exclusion zone or coordination zone be determined? Should the Commission instead specify interference protection limits that the terrestrial systems must meet to protect the earth stations? Such protection limits could take the form, for example, of an interference-to-noise ratio (I/N), carrier to interference-plus-noise ratio (C/I+N),[18] or a power density at the FSS receiver. If so, how would such a protection limit be modeled and enforced? In applying a protection limit, exclusion zone, or coordination zone, how should the aggregate interference from multiple base stations and associated mobile devices from the different MBX licensees be taken into account? Should the Commission require that earth stations remaining in the band be moved to less populated areas or can RF shielding of earth stations be employed to reduce the size of exclusion or coordination zones?

150. *Coexistence with FSS Operation Below 3700 MHz.*—There are 120 FSS earth stations that are authorized in the 3600–3700 MHz band. Yet, unlike FSS earth stations operating above 3800 MHz, Intelsat and SES have not proposed any particular means of protecting these earth stations against interference. Given that there will be no guard band to help prevent interference in this band, should operators of these stations be included in any transition mechanisms, including possible relocation to transponders above the MBX spectrum? How should these earth stations be treated during any transition process that is adopted for the MBX spectrum? If an earth station continues to receive signals below 3700 MHz, could the receiver be modified to protect the LNB from the MBX transmitters (*e.g.,* by adding a filter)? The Commission seeks comment on alternative means for mitigating interference to protect any continued FSS downlink operation below 3700 MHz.

151. The Commission seeks comment and quantitative analysis to demonstrate if the proposed MBX spectrum power and emission limits are sufficient, without additional mitigation methods, to protect any FSS earth station operation below 3700 MHz. The Commission expects that a minimum propagation loss plus additional attenuation would be required to protect FSS earth stations below 3700 MHz, depending on the separation distance between FSS and MBX-spectrum transmitters, the RF propagation environment, and FSS antenna (gain) orientation. Would exclusion zones or coordination zones be required around the earth stations?

152. The Commission seeks comment on the achievable RF shielding around the FSS earth stations and the cost thereof. Would using RF shielding be sufficient to protect FSS earth stations below 3700 MHz? In addition, or alternatively, would it be possible for the MBX spectrum licensees to engineer around the FSS antenna sites, such that the predicted propagation loss and additional attenuation of base/mobile emissions (fundamental power and out of band emission) would be sufficient to ensure that co-channel/out of band emission and blocking FSS thresholds were not exceeded?

153. *Coexistence with Telemetry, Tracking, and Command.*—FSS Earth stations that are used for telemetry, tracking and command of satellites have assignments near 3700 MHz, 3950 MHz, and 4200 MHz. These telemetry, tracking and command licenses may list widely varying bandwidths in IBFS. Most assignments are no more than 1–2 megahertz wide; however, others are less specific, and are recorded across the entire passband of the earth station receiver (*i.e.,* 3625–4200 MHz). Since there are a limited number of telemetry, tracking and command earth stations, should the Commission consider protection on a case-by-case basis through coordination between MBX-spectrum licensees and FSS earth station operators? What are the appropriate coexistence criteria for telemetry, tracking and command receivers [19] and do they differ from other earth station receivers? What interference mitigation techniques could be used to protect telemetry, tracking and command earth stations? For example, could RF shielding effectively reduce the interference to the telemetry, tracking and command earth stations? The Commission also seeks comment on whether telemetry, tracking and command earth stations located in or near densely populated areas could be relocated to more remote locations and, if so, how much such relocations would cost. Because telemetry, tracking and command transmissions are a function of satellite design and cannot be changed following launch, the Commission recognizes that earth stations receiving telemetry, tracking and command transmissions in the

[18] The carrier power is the power received by the earth station from the satellite.

[19] The Commission has adopted specific rules to protect TT&C earth stations that operate in in and adjacent to the 3.55–3.7 GHz band. These rules require that the aggregate passband RF power spectral density at the output of a reference RF filter and antenna at the location of a TT&C FSS earth station produced by all Citizens Broadband Service Devices within 40km of the earth station shall not exceed a median RMS value of −129 dBm/MHz. *See* 47 CFR 96.17.

MBX spectrum will require protection for the lifetime of the satellite. The Commission seeks comment on if protection of these operations would require a different approach depending on whether telemetry, tracking and command earth stations are within or outside of the MBX spectrum.

154. *Coexistence with Citizens Broadband Radio Service Operations in the 3550–3700 MHz Band.*—The Commission seeks comment on the compatibility between Citizens Broadband Radio Service and MBX systems, including the suitability of the out of band emission limit proposed above.[20] One concern about deploying a robust mobile broadband service adjacent to the Citizens Broadband Radio Service arises from the relatively higher power limits proposed above. One possibility for preventing interference between the services would be to impose adjacent channel power limits that could limit the differential between power levels for adjacent stations operating in the same area. Such a limit would be specified as a ratio between the total power in the channels immediately adjacent to an MBX-spectrum station to the total power in the MBX-spectrum station's emission bandwidth. Should the Commission specify such a ratio for MBX-spectrum devices, and if so, what limit would be appropriate?

155. *Field Strength Limit and Market Boundaries.*—If the Commission ultimately decide to license the MBX spectrum based on geographic service areas that are less than nationwide, the Commission will have to ensure that such licensees do not cause interference to co-channel systems operating along common geographic borders. The current rules for AWS–1, AWS–3 and AWS–4 address the possibility of harmful co-channel interference between geographically adjacent licenses by setting a field strength limit from base stations of 47 dBμV/m at the edge of the license area. In the 600 MHz band, the Commission adopted a field strength limit of 40 dBμV/m. In the UMFUS rules, the Commission adopted a limit of −76 dBm/m^2/MHz at a height of 1.5 meters above ground at the border of a licensee's service area.

156. The 47 dBμV/m limit that has been used in the AWS rules was developed at a time when signal bandwidths were much smaller than are likely to be used in the MBX spectrum. Furthermore, the 47 dBμV/m limit did not have an associated bandwidth. In the H Block proceeding, Sprint requested that the Commission modify the boundary limit to set a reference measurement bandwidth of 1 MHz, with the aim of limiting boundary power density to the equivalent of that first applied to PCS systems in 1993. At that time, operators were deploying mostly Digital AMPS, PCS1900 and CDMA technologies, which had channel bandwidths of 30 kHz, 200 kHz and 1.25 MHz, respectively. Sprint claims that because today's LTE transmissions operate on much wider bandwidths up to 20 MHz, a 47 dBμV/m limit measured over the full channel bandwidth will effectively result in a comparatively lower power level. Sprint proposed to adjust the field strength limit from 47 dBμV/m to 62 dBμV/m per MHz. Verizon has made a similar claim in the Incentive Auctions proceeding, proposing a field strength limit of 50 dBμV/m per MHz.

157. The Commission agrees with Sprint and Verizon that the market boundary limit should be related to the signal bandwidth. The Commission proposes to adopt the same −76 dBm/m^2/MHz power flux density limit at the service area boundaries as is used for the UMFUS rules. This UMFUS limit was calculated based on an interference criterion of 0 dB I/N and made assumptions about a typical antenna gain. The Commission seeks comment on whether the interference criterion and technical assumptions are appropriate

158. Finally, the Commission proposes that adjacent affected area licensees may voluntarily agree upon higher field strength boundary levels. This concept is already codified in the field strength rules for both PCS and AWS services, as Sprint acknowledges. Accordingly, to maintain consistency with the PCS and other AWS bands, the Commission proposes to permit adjacent area licensees to agree to a higher field strength limit

159. *Antenna Height Limits.*—The Commission proposes, as discussed below, that the flexible antenna height rules that apply to AWS–1 and AWS–3 should generally also apply to MBX spectrum. Specific antenna height restrictions for AWS–1 and AWS–3 base stations are not set forth in part 27 of the Commission rules. However, all part 27 services are subject to § 27.56, which bans antenna heights that would be a hazard to air navigation. Furthermore, the limitations of field strength at the geographical boundary of the license discussed above also effectively limit antenna heights. The Commission similarly proposes that no unique antenna height limits are needed for MBX-spectrum facilities; rather, the Commission believes that the general height restrictions are sufficient. The Commission seeks comment on this proposal, including the costs and benefits of the proposal and any alternatives. The Commission does not propose a height limit for fixed stations in the MBX spectrum. Although fixed stations were limited to 10 meters above ground in the AWS–1 band and were prohibited in the AWS–3 band. There are no antenna height limits for fixed stations in the AWS–4 band, since, unlike the former, it is not directly adjacent to certain Federal incumbents. Using this same reasoning, the Commission proposes no antenna height limits for fixed operation in the MBX spectrum. The Commission seeks comment on this proposal and request technical support for any alternative proposals.

160. *Canadian and Mexican Coordination.*—Section 27.57(c) of the Commission's rules provide that several AWS services, including WCS, AWS–1, AWS–3, AWS–4 and the H Block, are subject to international agreements with Mexico and Canada. The Commission proposes to apply the same limitation to the new MBX spectrum. Until such time as any adjusted agreements between the United States, Mexico, and/or Canada can be agreed to, operations must not cause harmful interference across the border, consistent with the terms of the agreements currently in force. The Commission notes that further modification (of the proposed or final rules) might be necessary in order to comply with any future agreements with Canada and Mexico regarding the use of these bands. The Commission seeks comment on this issue, including the costs and benefits of alternative approaches to this issue.

161. *General Part 27 Rules*—There are several additional technical rules applicable to all Part 27 services, including §§ 27.51 Equipment authorization, 27.52 RF safety, 27.54 Frequency stability, 27.56 Antennas structures; air navigation safety, and 27.63 Disturbance of AM broadcast station antenna patterns. As operations in the MBX spectrum will be a Part 27 service, the Commission proposes that all of these general Part 27 rules should

[20] In the Citizens Broadband Radio Service, the Commission has adopted out-of-channel emission limits of −13 dBm/MHz starting at the channel edges and −25 dBm/MHz beyond 10 megahertz of the channel edges. Additionally, the Commission adopted an out of band emission limit of −40 dBm/MHz beyond 20 megahertz of the 3.5 GHz band edges. 47 CFR 96.41(e). The Commission is currently considering proposals to change the emission limits based on claims that more relaxed limits are necessary to facilitate wider channels in the 3.5 GHz band. *See Promoting Investment in the 3550–3700 MHz Band,* Notice of Proposed Rulemaking and Order Terminating Petitions, 32 FCC Rcd 8071, 8089–8092 paragraph. 50 through 58 (2017).

apply to all MBX-spectrum licensees, including licensees who acquire their licenses through partitioning or disaggregation (to the extent the rules permit such aggregation). The Commission seeks comment on this approach, including its costs and benefits.

IV. Initial Regulatory Flexibility Analysis

162. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this 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 this *NPRM.* The text of the IRFA is set forth in Appendix B of the NPRM. Written comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM.* The Commission will send a copy of the *NPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

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

163. The *NPRM* seeks comment and makes proposals on a range of potential opportunities for more intensive fixed or flexible uses—particularly for wireless broadband services—in 500 megahertz of mid-band spectrum between 3.7–4.2 GHz (the band). In doing so, the *NPRM* proposes to add a mobile, except aeronautical mobile, allocation to the band and seeks comment on transitioning all or part of the band to terrestrial wireless broadband services. The actions are another step in the Commissions efforts to close the digital divide by providing wireless broadband connectivity across the nation and to secure U.S. leadership in the next generation of wireless services, including fifth-generation (5G) wireless, Internet of Things (IoT), and other advanced spectrum-based services.

164. In this proceeding, the Commission is pursuing the joint goals of making spectrum available for new wireless uses while effectively accommodating incumbent Fixed Satellite Service (FSS) and Fixed Service (FS) operations in the band. The *NPRM* seeks comment on various proposals for transitioning all or part of the band for flexible use. The *NPRM* also proposes and seeks comment on revisions to Parts 25 and 101 of the Commission's rules to promote more intensive fixed use of the band. Additionally, as part of the Commission's proposal to add a mobile, except aeronautical mobile, allocation, and to develop rules that would enable the band to be transitioned for more intensive fixed and flexible uses, the Commission encourages commenters to discuss and quantify the costs and benefits associated with any proposed approach along with other helpful technical or procedural details.

165. The 3.7–4.2 GHz band is currently allocated in the United States exclusively for non-federal use on a primary basis for the FSS (space-to-Earth) and the FS. For FSS, the 3.7–4.2 GHz band (space-to-Earth or downlink) is paired with the 5.925–6.425 GHz band (Earth-to-space or uplink), and collectively these bands are known as the ''conventional C-band.'' Domestically, satellite operators use this band to provide downlink signals of various bandwidths to licensed transmit receive, registered receive-only, and unregistered receive-only earth stations throughout the United States. Geostationary orbit (GSO) FSS satellites operating in the C-band typically have 24 transponders, each with a bandwidth of 36 megahertz received by one or more earth stations. Predominant GSO FSS uses include delivery of programming content to television and radio broadcasters, including transportable antennas used to cover live news and sports events, cable television and small master antenna systems, as well as the backhaul of telephone and data traffic. The band is also used for reception of telemetry signals transmitted by satellites, typically near 3.7 or 4.2 GHz.

166. Mid-band spectrum, in conjunction with lower and higher bands, is well suited for next generation wireless broadband services due to the combination of favorable propagation characteristics (as comparted to bands above 24 GHz) and the opportunity for additional channel re-use (as compared to bands below 3.7 GHz). With the ever-increasing demand for more data on mobile networks, wireless network operators have increasingly focused on providing more data capacity rather than providing coverage over large areas from individual base stations. One technique for providing increased capacity is to use smaller cell sizes—i.e., have each base station provide coverage over a smaller area. Using higher frequencies can be advantageous for deploying a higher density of base stations. The decreased propagation distances at higher frequencies reduces the interference between base stations using the same frequency, thereby allowing base stations to be more densely packed and increasing the overall system capacity. Therefore, mid-band spectrum presents wireless providers with the opportunity to deploy base stations using smaller cells to get higher spectrum reuse than the lower frequency bands while still providing indoor coverage. Relative to higher bands, mid-band spectrum also offers favorable propagation characteristics for fixed wireless broadband services in less densely populated areas.

167. In the *NPRM* the Commission proposes to add a non-federal mobile, except aeronautical mobile, service allocation to the 3.7–4.2 GHz band, and based on the Commission's conclusion that co-channel sharing is not feasible, the Commission seeks comment on several proposals to clear all or part of the band for flexible use. Because the *NPRM* seeks comment on several alternate approaches for making portions of the band available for flexible use, the appropriate operational and technical restrictions on terrestrial and FSS use of the band will depend on the selected mechanism for expanding flexible use in the band. Specifically, the *NPRM* seeks comment on three potential mechanisms for expanding flexible use in the 3.7–4.2 GHz band: (1) A market-based mechanism, (2) auctions mechanisms, and (3) alternative mechanisms. In pursuing the Commission's goal of creating additional opportunities for wireless broadband in mid-band spectrum, under each approach, the Commission seeks to balance incumbent interests, speed to market, and efficiency of use.

B. Legal Basis

168. The proposed action is taken pursuant to sections 1, 2, 3, 4(i), 7, 201, 301, 302, 303, 304, 307, 308, 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 153, 154(i), 157, 201, 301, 302, 303, 304, 307, 308, 309, 310, and 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

169. 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 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 that: (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.

170. *Small Businesses, Small Organizations, and Small Governmental Jurisdictions.* The Commission's action may, over time, affect small entities that are not easily categorized at present. The Commission therefore describes 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.

171. 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).

172. 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.''

173. *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 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 1000 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.

174. *Satellite Telecommunications.* This category comprises firms ''primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' Satellite telecommunications service providers include satellite and earth station operators. The category has a small business size standard of $32.5 million or less in average annual receipts, under SBA rules. For this category, U.S. Census Bureau data for 2012 show that there were a total of 333 firms that operated for the entire year. Of this total, 299 firms had annual receipts of less than $25 million. Consequently, the Commission estimates that the majority of satellite telecommunications providers are small entities.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

175. The potential rule changes proposed in this *NPRM,* if adopted, could impose some new reporting, recordkeeping, or other compliance requirements on some small entities. In addition to the proposed rule changes associated with the proposed mechanisms for expanding flexible use in the 3.7–4.2 GHz band, there could be new service rule compliance obligations. For new licensed flexible uses in the 3.7–4.2 GHz band, the *NPRM* seeks comment on various service rules that should apply, including construction benchmarks and technical operating requirements. In the event the Commission adopts the proposed service rules and issues licenses for flexible use in the band, any small entity licensee would be required to satisfy construction requirements, and comply with limits on power, out of band emissions, field strength, antenna height, and other existing coordination requirements. Licensees would be responsible for making certain construction demonstrations with the Commission through the Universal Licensing System showing that they have satisfied the relevant construction benchmarks.

176. The projected reporting, recordkeeping, and other compliance requirements proposed in the *NPRM* will apply to all entities in the same manner. The Commission believes that applying the same rules equally to all entities in this context promotes fairness. The revisions the Commission may ultimately adopt however, should benefit small entities by giving them more information about opportunities in the 3.7–4.2 GHz band, more flexibility to provide a wider range of services, and more options for gaining access to wireless spectrum.

177. *Application/Petition Freeze & Part 25 and 101 Modifications.* Applications for new or modified earth stations, applications for new or modified fixed microwave stations, and applications for new space stations operating in the 3.7–4.2 GHz band were previously frozen by the International, Wireless Telecommunications, and Public Safety and Homeland Security Bureaus.[21] The Bureaus took these actions to preserve the current landscape of authorized operations while the Commission proceeded with an ongoing inquiry into the possibility of permitting mobile broadband use and more intensive fixed use of the band in this proceeding. To reexamine the existing full-band, full-arc coordination policy, the *NPRM* proposes to revise the Commission's rules to bar new applications for space station licenses

[21] On April 19, 2018, the staff froze applications for new or modified fixed microwave stations and earth stations in the 3.7–4.2 GHz band to preserve the current landscape of authorized operations pending action as part of the Commission's ongoing inquiry into the possibility of permitting mobile broadband use and more intensive fixed use of the band through this proceeding. To provide the Commission and commenters with more accurate information about existing earth stations, however, the International Bureau, as a limited exception to the freeze, concurrently opened a 90-day window during which entities that own or operate existing FSS earth stations in the 3.7–4.2 GHz band could file an application to register or license the earth station, or file an application to modify an existing registration or license. On June 21, 2018, the International Bureau extended this filing-window for an additional 90 days until October 17, 2018, and also imposed a freeze on new space stations in the 3.7–4.2 GHz band.

and new petitions for market access concerning space-to-Earth operations in the 3.7–4.2 GHz band. Additionally, the *NPRM* seeks comment on modifying the Commission's part 25 rules to require operators of licensed or registered FSS earth stations receiving in the 3.7–4.2 GHz band to coordinate only the specific combinations of frequency, azimuth, and elevation angle that they regularly use and that such technical information be reflected on each earth station application and authorization. The *NPRM* seeks comment on whether this information should form the basis for protection from terrestrial stations.

178. The *NPRM* further proposes to update IBFS to remove 3.7–4.2 GHz band earth station licenses or registrations for which the licensee or registrant does not file the certifications required in the *Order* (to the extent they registered before April 19, 2018) and, more specifically, proposes that an earth station licensed or registered in IBFS be automatically terminated unless the licensee or registrant timely files the certification required by the *Order.* The *NPRM* seeks comment on revising the part 25 rules to limit eligibility to file applications for earth station licenses or registrations to incumbent earth stations, including comments on the relative costs and benefits of such a restriction.

179. The *NPRM* proposes to define incumbent earth stations as only those earth stations that (1) were operational as of April 19, 2018, (2) are licensed or registered in IBFS, or had a pending application for license or registration as of October 17, 2018, and (3) the licensee/registrant timely filed the certification required by the *Order.* The Commission further proposes that unregistered FSS earth stations lawfully receiving transmissions could continue to operate on an unprotected basis. The Commission seeks comment on whether incumbents that are small entities face any special or unique issues with respect to the transition such that they should be defined differently or have different obligations.

180. Because the Commission's consideration of some transition options may benefit from additional, more granular information on FSS earth station and space station operations in the band, the *NPRM* seeks comment on whether to seek additional information from FSS earth station or space station operators,[22] including information on transponder use, satellite points of communication, and other technical and operational data that would provide a more detailed picture of the actual usage of the band. The Commission also seeks comment on whether small entities face any special or unique issues with respect to proposed information collections such that they would require certain accommodations or additional time to comply. Commenters have been asked to describe, with specificity, how any additional information collection would support a given transition proposal and should provide a detailed assessment of the costs and benefits of such additional collections.

181. Comments have also been sought by the Commission on amending § 101.101 of the Commission's rules to permit point-to-multipoint FS broadband service in a portion of the 3.7–4.2 GHz band. In order to accommodate point-to-multipoint operations, the *NPRM* seeks comment on several amendments that may be necessary to part 25 and part 101 of the Commission's rules that currently apply to FS. The part 25 and 101 rules that would apply to point-to-multipoint FS operators would include regulatory requirements and restrictions including power limits, frequency coordination, and potential construction requirements. The *NPRM* also seeks comment on the appropriate channel plan, power limits, service areas, antenna standards, and construction requirements for point-to-multipoint operations in the band. Further, the NPRM seeks comment on any necessary technical requirements for frequency coordination between point-to-multipoint FS applicants and licensees and other operators in the band, including equipment authorizations for client devices that may be operated by persons other than those duly authorized by the licensee. The *NPRM* also seeks comment on whether to sunset the existing point-to-point FS operations in the band.

182. *Transitioning Mechanisms.* The transition to more intensive fixed and flexible use in the 3.7–4.2 GHz band will require Commission action to clear existing incumbent users from the band. The *NPRM* discusses various mechanisms for clearing incumbent users from the band. Each of these potential mechanisms for transitioning the band to flexible use—(1) a market-based mechanism, (2) auctions mechanisms, (3) alternative mechanisms—would require small entities that are incumbent operators in the band to participate in some sort of negotiation and agreement (either through the secondary market or through a Commission-administered auction) to reassign their spectrum access rights. Incumbents operating in the spectrum designated for new licensed flexible use would further be required to relocate their operations to different bands, potentially requiring reconfiguration or replacement of their existing facilities. However, once relocated, such operators and licensees would remain subject to the same Commission rules and obligations under which they are already operating.

183. In light of the differing approaches to transitioning the band to flexible use and the obligations that would result, the *NPRM* seeks comment from the parties on each mechanism. Specifically, for the market-based mechanism, the *NPRM* seeks comment on whether the Commission should adopt rules that would enable a market-based mechanism to the clearing of incumbents from some or all of the 3.7–4.2 GHz band, introducing flexible use in the band or encouraging more intensive fixed use while simultaneously protecting critical services offered by incumbents (*i.e.,* FSS space stations, FSS earth stations, FS licensees). Under such an approach, the Commission would seek to encourage incumbent FSS operators to voluntarily clear the spectrum. Satellite operators in the band could choose to make some or all of their spectrum available to terrestrial operators on the secondary market. In return, terrestrial operators would compensate affected incumbents. A secondary market approach could make spectrum available more quickly than other available mechanisms, such as an auction, and thus could facilitate rapid deployment of next generation wireless broadband networks. Moreover, such an approach could leverage the technical and operational knowledge of satellite space station operators while relying on market incentives to promote economic efficiency. The *NPRM* seeks comment on whether a market-based mechanism could effectively and rapidly facilitate new terrestrial deployments in the band.

184. More specifically, the *NPRM* states that a transition under a market-based mechanism could be undertaken in a four-step process. The first step would involve the industry voluntarily forming a Transition Facilitator composed of eligible C-band satellite operators. In the second step, the Transition Facilitator would negotiate with any interested terrestrial operators and incumbent users. In the third step, the Commission would review the Transition Facilitator's plan and conditionally authorize terrestrial licenses in the band. And in step four, the Transition Facilitator would clear

[22] In the *Order,* the Commission directed temporary fixed or transportable FSS earth station operators and FSS space station operators in the 3.7–4.2 GHz band to provide certain information on their current operations.

the negotiated-for spectrum, making it available for flexible use while protecting incumbent earth stations through a variety of potential means. The *NPRM* notes as well that a market-based process need not be a one-time event—a Transition Facilitator could negotiate with parties for compensation and protection, seek Commission review and conditional authorization, and clear new spectrum multiple times to ensure the total spectrum dedicated to flexible use meets market demands.

185. For auctions as a transition mechanism, the *NPRM* seeks comment on approaches using the Commission's general auction authority to introduce flexible use in the 3.7–4.2 GHz band. Incentive auctions provide the Commission with new tools to make additional spectrum available for broadband. Incentive auctions are a voluntary, market-based means of repurposing spectrum by encouraging licensees to compete to voluntarily relinquish spectrum usage rights in exchange for a share of the proceeds from an auction of new licenses to use the repurposed spectrum. The *NPRM* therefore seeks comment on whether an incentive auction could work in the context of the 3.7–4.2 GHz band.

186. Recognizing that the band's incumbent structure presents unique issues distinct from those present in the broadcast incentive auction, the *NPRM* seeks comment on possible approaches to inducing satellite incumbents to reveal the least amount they must be paid to relinquish any given amount of spectrum. The *NPRM* also seeks comment on whether the Commission should accept applications for overlay licenses—assigned by competitive bidding if mutually exclusive applications for it were accepted—that would permit the overlay licensees to negotiate with incumbent licensees to clear all or part of the band and then transfer flexible use licenses in the secondary market. An overlay license authorizes operation for an entire geographic area but requires the licensee to protect existing incumbents from interference indefinitely, *i.e.,* until the rights are relinquished. The *NPRM* seeks comment on whether assigning overlay licenses in the band would expedite flexible use of more of the band compared with other approaches. Under this approach, the overlay licensee would have the right to flexible use of any spectrum that becomes available as a result of incumbents' relinquishing their spectrum usage rights. The *NPRM* seeks comment on how other parties that would be affected by repurposing 3.7–4.2 GHz band spectrum should be treated, and whether the overlay licensee or the satellite incumbents relinquishing spectrum should be required to provide incumbent earth station operators comparable replacement facilities or media.

187. With the auctions mechanism, the *NPRM* further seeks comment, as an alternative to paying satellite incumbents to relinquish spectrum usage rights, on conducting a reverse auction for satellite transponder capacity that could be used to replace lost C-band transponder capacity resulting from reallocating C-band spectrum to flexible use. Under this approach, an individual bidder in the reverse auction could contribute towards clearing spectrum. Potential bidders could be any FCC licensee that could make transponder capacity available in either C-band or Ku-band. Satellite bidders could offer capacity created by launching new satellites in vacant orbital slots and by relinquishing existing capacity. Satellite customers can offer capacity made available by substituting services (*e.g.* fiber) to fulfill their capacity needs, reducing the amount or quality of programming distributed, or using greater compression to reduce the capacity required to carry a given amount of programming or data. C-band transponder capacity that is lost due to the reduced amount of available spectrum and that was not relinquished in the reverse auction by C-band satellite operators, could be repacked onto replacement capacity for the life of those lost transponders. This would compensate C-band licensees for their lost capital investments, but not for the loss of their spectrum. The *NPRM* seeks comment on whether under this approach such additional compensation for the loss of spectrum should be accomplished by extending the length of time free replacement capacity is offered or by some other means, *e.g.,* a financial payment.

188. As another possible transition mechanism, the *NPRM* seeks comment on approaches that combine various elements of the mechanisms discussed above, as well as other mechanisms for transitioning all or part of the 3.7–4.2 GHz band for wireless broadband use. For example, the *NPRM* seeks comment on a hybrid approach under which the Commission would auction a majority of the band under traditional mechanisms and grant FSS operators flexible use authority (*i.e.,* allowing them to use a market-based approach) for the rest of the band so long as they timely clear the auctioned portion. The *NPRM* asks whether the Commission could use this approach or another combination of approaches to strike a balance between incumbent and new entrant interests and, if so, how much of the band should be cleared under a traditional mechanism and how much could be left for FSS space station operators to clear under a market approach. The *NPRM* seeks comment on how the Commission can ensure the band is transitioned in a timely manner and whether a backstop mechanism should be triggered by a FSS operator's failure to clear the band in a timely manner. The *NPRM* asks commenters to provide data on the costs and benefits associated with any alternative mechanism over other possible or suggested methods.

189. Recognizing that the transition to flexible use licenses in the 3.7–4.2 GHz band will be complicated logistically and needs to be carried out promptly in order to get the repurposed spectrum into the hands of flexible use licensees to address spectrum needs, the *NPRM* seeks comment on a range of transition issues applicable to each of the alternative mechanisms for expanding flexible use discussed above. The *NPRM* seeks comment on reasonable deadlines for implementation of each mechanism, or other approaches suggested by commenters, including deadlines for incumbents to cease transmitting on a primary basis in the portion of the 3.7–4.2 GHz band that becomes available for flexible use. The *NPRM* seeks comment on how to define the appropriate class of incumbents for protection and possible reimbursement purposes and the relative obligations and/or rights that each category of incumbents may have under each mechanism. Further, the *NPRM* seeks comment on what requirements and safeguards the Commission should adopt to ensure the timely and complete transition of all required incumbents pursuant to each mechanism for expanding flexible use in the band. Such requirements and safeguards could include, among others: Requiring all parties act in good faith; adopting a definition of comparable facilities; adopting financial or regulatory protections that can ensure that all transition obligations are satisfied in the event of bankruptcy or other events; and any technical rules that the Commission needs to adopt to apply specifically during the transition. Finally, the *NPRM* seeks comment on whether the Commission should seek additional information from FSS earth station and space station operators in the 3.7–4.2 GHz band that would provide additional clarity on the actual usage and availability of spectrum in the band.

190. Assuming that the Commission ultimately decides to add a mobile,

except aeronautical mobile, allocation and make some or all of the 3.7–4.2 GHz band available for flexible use, the *NPRM* proposes and seeks comment on band plans, licensing and operating, and technical rules for the 3.7–4.2 GHz band spectrum that becomes available for terrestrial mobile and fixed flexible use. The *NPRM* proposes to license this spectrum under the Commission's flexible use, part 27 rules that permit licensees to provide any fixed or mobile service consistent with the allocations for this spectrum, subject to rules necessary to prevent or minimize harmful interference.

191. *Band Plan(s).* The *NPRM* seeks comment on whether to license according to part 27 nationwide or only in the contiguous 48 states and whether there are issues unique to any of the areas outside of the contiguous 48 that would make it impractical to transition all or part of the band to flexible use. The *NPRM* seeks comment on appropriate block size(s) to promote efficient and robust use of the band for next generation wireless technologies, including 5G. Recognizing that the 3.7–4.2 GHz spectrum that becomes available for flexible use could be configured in any number of paired or unpaired modes, the *NPRM* seeks comment on a range of options for paired and/or unpaired blocks and the costs and benefits of particular approaches. Finally, consistent with the Commission's approach in several other bands used to provide fixed and mobile services, the *NPRM* proposes to license the 3.7–4.2 GHz Mid-Band Flexible Use (MBX) spectrum on an exclusive, geographic area basis. The *NPRM* seeks comment on an appropriate geographic license area size(s) for this band and asks commenters to discuss and quantify the economic, technical, and other public interest considerations of licensing on a PEA, county, nationwide, or other basis.

192. *Licensing and Operating Rules.* In order to afford licensees the flexibility to align licenses in the 3.7–4.2 GHz band with licenses in other spectrum bands governed by part 27 of the Commission's rules, the *NPRM* proposes that licensees in the 3.7–4.2 GHz band comply with licensing and operating rules that are applicable to all part 27 services, including assignment of licenses by competitive bidding, flexible use, regulatory status, foreign ownership reporting, compliance with construction requirements, renewal criteria, permanent discontinuance of operations, partitioning and disaggregation, and spectrum leasing, and seeks comment on this approach. The *NPRM* also proposes an open eligibility standard for licenses in the 3.7–4.2 GHz band and seeks comments on the proposal that should include a discussion of the costs and benefits of the open eligibility proposal on competition, innovation, and investment. The adoption of an open eligibility approach would not affect citizenship, character, or other generally applicable qualifications that may apply under the Commission's rules. The *NPRM* further seeks comment on a 15-year term for licenses in the 3.7–4.2 GHz band. Finally, in the event that the Commission assigns licenses for the 3.7–4.2 GHz band through competitive bidding, the Commission proposes to exclude from eligibility a person who has been, for reasons of national security, barred by any agency of the Federal Government from bidding on a contract, participating in an auction, or receiving a grant.

193. Regarding mobile spectrum holding policies, the Commission proposes not to adopt a pre-auction bright-line limit on the ability of any entity to acquire spectrum in the 3.7–4.2 GHz band through competitive bidding at auction similar to the Commission's approach in the *2017 Spectrum Frontiers Order and FNPRM.* Additionally, if an auction is chosen as the mechanism to transition to flexible uses in the 3.7–4.2 GHz band, the Commission proposes to review holdings on a case-by-case basis when applications for initial licenses are filed post-auction to ensure that the public interest benefits of having a threshold on spectrum applicable to secondary market transactions are not rendered ineffective.

194. *Performance Requirements.* The *NPRM* seeks comment on requiring a 3.7–4.2 GHz band licensee, relying on mobile or point-to-multipoint service in accordance with the Commission's part 27 rules, to provide reliable signal coverage and offer service to at least forty-five (45) percent of the population in each of its license areas within six years of the license issue date (first performance benchmark), and to at least eighty (80) percent of the population in each of its license areas within 12 years from the license issue date (second performance benchmark). For licensees relying on point-to-point service, the *NPRM* seeks comment on requiring them to demonstrate within six years of the license issue date (first performance benchmark) that they have four links operating and providing service, either to customers or for internal use, if the population within the license area is equal to or less than 268,000. If the population within the license area is greater than 268,000, the *NPRM* seeks comment on requiring a licensee relying on point-to-point service to demonstrate it has at least one link in operation and providing service per every 67,000 persons within a license area. Further, the *NPRM* seeks comment on requiring licensees relying on point-to-point service to demonstrate within 12 years of the license issue date (final performance benchmark) that they have eight links operating and providing service, either to customers or for internal use, if the population within the license area is equal to or less than 268,000. If the population within the license area is greater than 268,000, the *NPRM* seeks comment on requiring a licensee relying on point-to-point service to demonstrate it is providing service and has at least two links in operation per every 67,000 persons within a license area.

195. While the *NPRM* seeks comment on performance benchmarks based on population coverage applicable for a range of fixed and mobile services, the *NPRM* recognizes that 3.7–4.2 GHz licenses have flexibility to provide services potentially less suited to a population coverage metric. In particular, licensees providing Internet of Things-type fixed and mobile services may benefit from an alternative performance benchmark metric, and the *NPRM* seeks comment on the appropriate metric to accommodate such service offerings.

196. Along with performance benchmarks, the *NPRM* seeks comment on which penalties will most effectively ensure timely build-out. Specifically, the *NPRM* states that, in the event a 3.7–4.2 GHz licensee fails to meet the first performance benchmark, the licensee's second benchmark and license term would be reduced by two years, thereby requiring it to meet the second performance benchmark two years sooner (at 10 years into the license term) and reducing its license term to 13 years. The *NPRM* proposes that, in the event a 3.7–4.2 GHz licensee fails to meet the second performance benchmark for a particular license area, its authorization for each license area in which it fails to meet the performance requirement shall terminate automatically without Commission action. Additionally, the Commission also proposes that, in the event a licensee's authority to operate terminates, the licensee's spectrum rights would become available for reassignment pursuant to the competitive bidding provisions of § 309(j). Further, consistent with the Commission's rules for other licenses, including AWS–1, AWS–3, AWS–4, and H Block, the *NPRM* proposes that any

3.7–4.2 GHz licensee who forfeits its license for failure to meet its performance requirements would be precluded from regaining the license.

197. *Compliance Procedures.* In addition to compliance procedures applicable to all part 27 licensees, including the filing of electronic coverage maps and supporting documentation, the *NPRM* proposes that such electronic coverage maps must accurately depict the boundaries of each license area in the licensee's service territory. If a licensee does not provide reliable signal coverage to an entire license area, the *NPRM* proposes that its map must accurately depict the boundaries of the area or areas within each license area not being served. Further, the *NPRM* proposes that each licensee also must file supporting documentation certifying the type of service it is providing for each licensed area within its service territory and the type of technology used to provide such service. Supporting documentation must include the assumptions used to create the coverage maps, including the propagation model and the signal strength necessary to provide reliable service with the licensee's technology. The Commission seeks comment on these proposals. The Commission also seeks comment on whether small entities face any special or unique issues with respect to the transition such that they would require additional time to comply.

198. *Renewal Term Construction Obligations.* The *WRS Renewal Reform FNPRM* proposed to apply rules adopted in that proceeding to all flexible geographic licenses. Given the proposal to license this band on a geographic basis for flexible use, any additional renewal term construction obligations proposed in the *WRS Renewal Reform FNPRM* also would apply to licenses in the 3.7–4.2 GHz band. Accordingly, the *NPRM* seeks comment on whether there are unique characteristics of the 3.7–4.2 GHz band that might require a different approach than the various proposals raised by the *WRS Renewal Reform FNPRM.*

199. *Competitive Bidding Procedures.* Consistent with the competitive bidding procedures the Commission has used in previous auctions, the *NPRM* proposes that the Commission would conduct any auction for licenses for spectrum in the 3.7–4.2 GHz band in conformity with the general competitive bidding rules set forth in part 1, Subpart Q, of the Commission's rules. Specifically, the *NPRM* proposes to employ the part 1 rules governing competitive bidding design, designated entity preferences, unjust enrichment, application and certification procedures, payment procedures, reporting requirements, and the prohibition on certain communications between auction applicants. Under this proposal, such rules would be subject to any modifications that the Commission may adopt for its part 1 general competitive bidding rules in the future. The *NPRM* seeks comment on whether any of the Commission's part 1 rules would be inappropriate or should be modified for an auction of licenses in this frequency band. In particular, the *NPRM* seeks comment on the following proposals for bidding credits for designated entities in this band. As with other flexible use licenses in recent years, the *NPRM* proposes to adopt in this band, bidding credits for the two larger designated entity business sizes provided in the part 1 rules. The *NPRM* also proposes to offer rural service providers a designated entity bidding credit for licenses in this band. The *NPRM* asks commenters addressing these proposals to consider what details of licenses in the band may affect whether designated entities will apply for them.

200. *Technical Rules.* Consistent with existing rules for other advanced wireless services, the *NPRM* proposes power limits for fixed and base stations of 1640 watts EIRP for emission bandwidths less than one megahertz and to 1640 watts per MHz EIRP for emission bandwidths greater than one megahertz. For mobiles and portables in the 3.7–4.2 GHz band, the *NPRM* proposes to limit the power to 1 Watt (30 dBm). The *NPRM* also proposes that the power limit measurement methodology be based on the average power measurement and seeks comment on this proposal. Additionally, the *NPRM* proposes that mobile and portable stations operating in the 3.7–4.2 GHz band must employ a means for limiting power to the minimum necessary for successful communications.

201. For out-of-band-emissions, the *NPRM* proposes that emissions be kept to a level that will provide protection to incumbent services in adjacent bands, while allowing the full use of the new band, and therefore proposes to apply the longstanding limit on out-of-band-emission of -13 dBm/MHz at the authorized channel edge as measured at the antenna terminals. Further, the *NPRM* seeks comment on whether additional technical protection criteria, beyond out-of-band-emission limits, are necessary to ensure effective coexistence with adjacent band FSS operations.

202. To implement field strength limit at market boundaries, the *NPRM* proposes to adopt a -76 dBm/m^2/MHz power flux density limit at the service area boundaries, and further proposes that adjacent affected area licensees may voluntarily agree upon higher field strength boundary levels and to permit such agreement. Regarding antenna height, the *NPRM* proposes that the part 27 flexible antenna height rules that apply to AWS–1 and AWS–3 should generally also apply to MBX spectrum, that no unique antenna height limits are needed for MBX-spectrum facilities and that no antenna height limits are needed for fixed operation in the MBX spectrum. The Commission seeks comments on these proposals, including cost and benefit information.

203. For new MBX spectrum, the *NPRM* proposes to apply the limitations to Canada and Mexico from § 27.57(c) of the Commission's rules that provide that several AWS services, including WCS, AWS–1, AWS–3, AWS–4 and H Block are subject to international agreements with Mexico and Canada. Lastly, the *NPRM* proposes that several additional technical rules applicable to all part 27 services, including §§ 27.51 Equipment authorization, 27.52 RF safety, 27.54 Frequency stability, 27.56 Antennas structures; air navigation safety, and 27.63 Disturbance of AM broadcast station antenna patterns should apply to all MBX-spectrum licensees, including licensees who acquire their licenses through partitioning or disaggregation (to the extent the rules permit such aggregation). The Commission seeks comment on this approach, including its costs and benefits.

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

204. The RFA requires an agency to describe any significant, specifically small business, alternatives 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 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.''

205. In this proceeding, the Commission seeks to identify potential opportunities for additional flexible access—particularly for wireless broadband services—in 500 megahertz

of mid-band spectrum between 3.7–4.2 GHz. While lacking specific data in general, which includes data on small entities, the Commission has taken steps to enable it to minimize the economic burden on small entities that could occur if some of the rule changes or approaches proposed in the *NPRM* are adopted. Throughout the *NPRM,* the Commission seeks comment on whether small entities face any special or unique issues with respect to the information collection such that they would require certain accommodations or additional time to comply. The Commission also seeks comment on modifications that could be made to the Commission's rules regarding administrative processes that would reduce the economic impacts of proposed rule changes on small entities. Seeking comments specifically targeting small entities should provide the Commission with the requisite data to consider the most cost-effective approach to minimize the economic impact for such entities while achieving its statutory objectives.

206. With respect to the application freeze and information collection for incumbent earth stations operating in the 3.7–4.2 GHz band, the Commission has taken several steps to reduce the economic burden of its actions. During the freeze on new earth station applications and filing window for incumbent FSS earth station operators, the International Bureau granted a temporary waiver of the frequency coordination requirement in the band. To ensure that earth station data contained in the Commission's IBFS remains accurate to facilitate frequency coordination and maximize efficient use of the spectrum, the *NPRM* seeks comment on whether, for a constructed and operational earth station, any combination of frequency, azimuth, and elevation listed in the license or registration that is unused for more than, *e.g.,* 180 days, must be deleted from the license or registration. By proposing to delete data for earth stations that are unused, the *NPRM* seeks to minimize unnecessary constraints on successful frequency coordination of new operations, which reduces the economic impact on small entities, who often have more limited resources to allocate towards such regulatory compliance burdens. The *NPRM* also proposes to adopt specific definitions of each class of incumbents that would require protection and be entitled to possible reimbursement for clearing the band. This proposal has the dual benefit to small entities of creating a means for compensating any unexpected costs they may experience as a result of transitioning the band to flexible use, as well as providing a clear definition of the class of operators that requires interference protection and coordination, thereby avoiding overly burdensome and unnecessary obligations.

207. The *NPRM* seeks comment on several ways to facilitate more intensive fixed use of the 3.7–4.2 GHz band by allowing point-to-multipoint operations in the band through rules that will promote more efficient use of the limited spectrum available. In doing so, the *NPRM* makes several proposals to reduce the burden of frequency coordination for any new point-to-multipoint licensees, which would benefit small entities, and seeks comment on rules that are narrowly tailored to the needs of point-to-multipoint operations in particular, without the need for unnecessary regulatory burdens. The *NPRM* seeks comment on subjecting point-to-multipoint FS applicants to an expedited coordination process with mandatory electronic notification and response, and on the possibility of adopting an automated coordination process for point-to-multipoint FS applications. The *NPRM* asks commenters to discuss specifically any modifications that could be made to the Commission's coordination rules that would reduce the economic impact on small entities. In seeking comment on the appropriate construction requirements to apply to point-to-multipoint operations, the *NPRM* asks commenters to consider the economic impact on consumers and businesses in rural communities and areas that are unserved or underserved by current broadband providers, as well as any economic impact on small businesses.

208. The *NPRM* discusses various proposals to reallocate and transition the 3.7–4.2 GHz band to more intensive fixed and flexible use, and seeks comment on ways to minimize the economic impact of any rule changes specifically with respect to small entities. For example, in seeking comment on whether to seek additional information from FSS earth station registrants or space station licensees, the *NPRM* asks whether small entities face any special or unique issues with respect to the information collection such that they would require certain accommodations or additional time to comply.

209. Further, in its discussion of the three potential mechanisms for transitioning the band to flexible use—(1) market-based mechanism, (2) auctions mechanisms, (3) alternative mechanisms—the Commission seeks specific comment on the costs, benefits, and potential economic impact on small businesses, and asks commenters to discuss any rules or procedures that could be implemented to ensure that the needs of these communities and businesses are adequately addressed. Each of these transition mechanisms rely heavily on a competitive marketplace to set the value of spectrum and compensate incumbents for the costs of relocating, reconfiguring, and potentially lost opportunity cost. Specifically, for small entities that may be incumbent satellite or earth station operators in the band, the Commission is focused on facilitating competition in the band and ensuring that all relevant interests, not just those of the largest companies, are represented. This will help to reduce the potential economic impact on small entities.

210. The *NPRM* also seeks comment on applying 15-year license terms for any licensees issued in the 3.7–4.2 GHz band. Specifically for small entities who must allocate resources carefully over the length of their license term, and have more limited funds should they be required to compete at auction for a particular license, the certainty of a longer license term would provide licensees with sufficient incentive to make the long-term investments necessary for compliance.

211. The Commission finds an overriding public interest in encouraging investment in wireless networks, facilitating access to scarce spectrum resources, and promoting the rapid deployment of mobile services to Americans. All licensees, including small entities, play a crucial role in achieving these goals. Thus while the *NPRM* does not propose any exemption for small entities, as mentioned above, the Commission seeks comment on alternative obligations, timing for implementation, scope of subject licenses, penalties for failure, and other measures that could accommodate the needs and resources of small entities. The Commission will carefully consider these matters as it relates to small entities before adopting final rules in this proceeding.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

212. None.

V. Ordering Clauses

213. *It is ordered,* pursuant to the authority found in sections 1, 2, 3, 4(i), 7, 201, 301, 302, 303, 304, 307, 308, 309, and 310 of the Communications Act of 1934, 47 U.S.C. 151, 152, 153, 154(i), 157, 201, 301, 302, 303, 304, 307, 308,

309, 310, and section 706 of the Telecommunications Act of 1996, as amended, 47 U.S.C. 1302, and 1.411 of the Commission's Rules, 47 CFR 1.411, that this Notice of Proposed Rulemaking *is hereby adopted.*

214. *It is further ordered* that *notice is hereby given* of the proposed regulatory changes described in this Notice of Proposed Rulemaking, and that comment is sought on these proposals.

215. *It is further ordered* that the Petition for Rulemaking filed by the Broadband Access Coalition on June 21, 2017, RM–11791, *is granted* to the extent indicated herein and is otherwise denied.

216. *It is further ordered* that the Petition for Rulemaking filed by the Fixed Wireless Communications Coalition, Inc, on October 11, 2016, RM–11778, *is granted* to the extent indicated herein and is otherwise denied.

217. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects 47 CFR Parts 1, 2, 25 and 27

Practice and procedure, Communications common carrier, Communications equipment, Reporting and recording requirements, Satellites.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 1, 2, 25, and 27 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 157, 160, 201, 225, 227, 303, 309, 332, 1403, 1404, 1451, 1452, and 1455, unless otherwise noted.

■ 2. Amend § 1.907 by revising the definition of ''Covered Geographic Licenses'' to read as follows:

§ 1.907 Definitions.

* * * * *

Covered Geographic Licenses. Covered geographic licenses consist of the following services: 1.4 GHz Service (part 27, subpart I); 1.6 GHz Service (part 27, subpart J); 24 GHz Service and Digital Electronic Message Services (part 101, subpart G); 218–219 MHz Service (part 95, subpart F); 220–222 MHz Service, excluding public safety licenses (part 90, subpart T); 600 MHz Service (part 27, subpart N); 700 MHz Commercial Services (part 27, subpart F and H); 700 MHz Guard Band Service (part 27, subpart G); 800 MHz Specialized Mobile Radio Service (part 90, subpart S); 900 MHz Specialized Mobile Radio Service (part 90, subpart S); Mid-Band Flexible Use Service (part 27, subpart O); Advanced Wireless Services (part 27, subparts K and L); Air-Ground Radiotelephone Service (Commercial Aviation) (part 22, subpart G); Broadband Personal Communications Service (part 24, subpart E); Broadband Radio Service (part 27, subpart M); Cellular Radiotelephone Service (part 22, subpart H); Dedicated Short Range Communications Service, excluding public safety licenses (part 90, subpart M); H Block Service (part 27, subpart K); Local Multipoint Distribution Service (part 101, subpart L); Multichannel Video Distribution and Data Service (part 101, subpart P); Multilateration Location and Monitoring Service (part 90, subpart M); Multiple Address Systems (EAs) (part 101, subpart O); Narrowband Personal Communications Service (part 24, subpart D); Paging and Radiotelephone Service (part 22, subpart E; part 90, subpart P); VHF Public Coast Stations, including Automated Maritime Telecommunications Systems (part 80, subpart J); Upper Microwave Flexible Use Service (part 30); and Wireless Communications Service (part 27, subpart D).

* * * * *

■ 3. Amend § 1.9005 by adding paragraph (mm) to read as follows:

§ 1.9005 Included services.

* * * * *

(mm) The Mid-Band Flexible Use Service in the 3700–4200 MHz band.

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

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

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 5. Amend § 2.106, the Table of Frequency Allocations, by revising page 41 and, under ''Non-Federal Government (NG) Footnotes,'' adding footnote NG182 to read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

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Table of Frequency Allocations	3500-5460 MHz (SHF)				Page 41
International Table			United States Table		FCC Rule Part(s)
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			3550-3650 RADIOLOCATION G59 AERONAUTICAL RADIONAVIGATION (ground-based) G110	3550-3600 FIXED MOBILE except aeronautical mobile US105 US433	Citizens Broadband (96)
3600-4200 FIXED FIXED-SATELLITE (space-to-Earth) Mobile		3600-3700 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile Radiolocation 5.433	US105 US107 US245 US433	3600-3650 FIXED FIXED-SATELLITE (space-to-Earth) US107 US245 MOBILE except aeronautical mobile US105 US433	Satellite Communications (25) Citizens Broadband (96)
		5.435	3650-3700 US109 US349	3650-3700 FIXED FIXED-SATELLITE (space-to-Earth) NG169 NG185 MOBILE except aeronautical mobile US109 US349	
	3700-4200 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile		3700-4200	3700-4200 FIXED FIXED-SATELLITE (space-to-Earth) NG180, NG182	Satellite Communications (25) Wireless

		MOBILE except aeronautical mobile	Communications (27) Fixed Microwave (101)
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Non-Federal Government (NG) Footnotes

* * * * *

NG182 In the band 3700–4200 MHz, the following provisions shall apply to geostationary satellite orbit (GSO) fixed-satellite service (space-to-Earth) operations:

(a) Space stations authorized prior to, or authorized as a result of an application filed prior to, June 21, 2018 may continue to operate on a primary basis, but no applications for new space station authorizations or new petitions for market access shall be accepted for filing after that date, other than applications by existing operators in the band seeking to make more efficient use of the band. Applications for extension, cancellation, replacement, or modification of existing space station authorizations in the band will continue to be accepted and processed normally.

(b) Earth station operations shall not claim protection from terrestrial stations, unless the requirements of 47 CFR 25.203(n) are satisfied.

PART 25—SATELLITE COMMUNICATIONS

■ 6. The authority citation for Part 25 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309, 310, 319, 332, 605, and 721, unless otherwise noted.

■ 7. Amend § 25.203 by adding paragraph (n) to read as follows:

§ 25.203 Choice of sites and frequencies.

* * * * *

(n) Earth stations operating in the 3700–4200 MHz band shall receive interference protection from terrestrial stations only to the extent that (1) the earth station was operational as of April 19, 2018, (2) the earth station was licensed or registered (or had a pending application for license or registration) in the IBFS database as of October 17, 2018, and (3) the operator timely certified the accuracy of information on file with the Commission to the extent required by the Order adopted in FCC 18–XXX. Earth stations failing to satisfy any of the above may continue to operate, but such operations shall be on an unprotected basis.

PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

■ 8. The authority citation for part 27 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302a, 303, 307, 309, 332, 336, 337, 1403, 1404, 1451, and 1452, unless otherwise noted.

■ 9. Amend § 27.1 by adding paragraph (b)(15) to read as follows:

§ 27.1 Basis and purpose.

* * * * *

(b) * * *

(15) 3700–4200 MHz.

* * * * *

■ 10. Amend § 27.13 by adding paragraph (m) to read as follows:

§ 27.13 License period.

* * * * *

(m) *3700–4200 MHz band.* Authorizations for the 3700–4200 MHz band will have a term not to exceed 15 years from the date of issuance or renewal.

■ 11. Amend § 27.14 by revising the first sentence of paragraphs (a) and (k), and adding paragraph (u) to read as follows:

§ 27.14 Construction requirements.

(a) AWS and WCS licensees, with the exception of WCS licensees holding authorizations for the 600 MHz band, Block A in the 698–704 MHz and 728–734 MHz bands, Block B in the 704–710 MHz and 734–740 MHz bands, Block E in the 722–728 MHz band, Block C, C1 or C2 in the 746–757 MHz and 776–787 MHz bands, Block A in the 2305–2310 MHz and 2350–2355 MHz bands, Block B in the 2310–2315 MHz and 2355–2360 MHz bands, Block C in the 2315–2320 MHz band, Block D in the 2345–2350 MHz band, and 3700–4200 MHz band, and with the exception of licensees holding AWS authorizations in the 1915–1920 MHz and 1995–2000 MHz bands, the 2000–2020 MHz and 2180–2200 MHz bands, or 1695–1710 MHz, 1755–1780 MHz and 2155–2180 MHz bands, must, as a performance requirement, make a showing of ''substantial service'' in their license area within the prescribed license term set forth in § 27.13. * * *

* * * * *

(k) Licensees holding WCS or AWS authorizations in the spectrum blocks enumerated in paragraphs (g), (h), (i), (q), (r), (s), (t), and (u) of this section, including any licensee that obtained its license pursuant to the procedures set forth in paragraph (j) of this section, shall demonstrate compliance with performance requirements by filing a construction notification with the Commission, within 15 days of the expiration of the applicable benchmark, in accordance with the provisions set forth in § 1.946(d) of this chapter. * * *

* * * * *

(u) The following provisions apply to any licensee holding an authorization in the 3700–4200 MHz band:

(1) A licensee shall provide reliable signal coverage and offer service within six (6) years from the date of the initial license to at least forty-five (45) percent of the population in each of its license areas (''First Buildout Requirement'').

(2) A licensee shall provide reliable signal coverage and offer service within twelve (12) years from the date of the initial license to at least eighty (80) percent of the population in each of its license areas (''Second Buildout Requirement'').

(3) If a licensee fails to establish that it meets the First Buildout Requirement for a particular license area, the licensee's Second Buildout Requirement deadline and license term will be reduced by two years.

(4) If a licensee fails to establish that it meets the Second Buildout Requirement for a particular license area, its authorization for each license area in which it fails to meet the Second Buildout Requirement shall terminate automatically without Commission action, and the licensee will be ineligible to regain it if the Commission makes the license available at a later date.

(5) To demonstrate compliance with these performance requirements, licensees shall use the most recently available decennial U.S. Census Data at the time of measurement and shall base their measurements of population served on areas no larger than the Census Tract level. The population within a specific Census Tract (or other acceptable identifier) will be deemed served by the licensee only if it provides reliable signal coverage to and offers service within the specific Census Tract (or other acceptable identifier). To the extent the Census Tract (or other acceptable identifier) extends beyond the boundaries of a license area, a licensee with authorizations for such areas may include only the population within the Census Tract (or other acceptable identifier) towards meeting the performance requirement of a single, individual license. For the Gulf of Mexico license area, the licensee shall demonstrate compliance with these performance requirements, using off-shore platforms, including production, manifold, compression, pumping and valving platforms as a proxy for population in the Gulf of Mexico.

■ 12. Amend § 27.50 by revising the introductory text to paragraphs (d), (d)(1), and (d)(2) and paragraph (d)(4) to read as follows:

§ 27.50 Power limits and duty cycle.

* * * * *

(d) The following power and antenna height requirements apply to stations transmitting in the 1695–1710 MHz, 1710–1755 MHz, 1755–1780 MHz,

1915–1920 MHz, 1995–2000 MHz, 2000–2020 MHz, 2110–2155 MHz, 2155–2180 MHz, 2180–2200 MHz, and 3700–4200 MHz bands:

(1) The power of each fixed or base station transmitting in the 1995–2000 MHz, 2110–2155 MHz, 2155–2180 MHz, 2180–2200 MHz band, or 3700–4200 MHz band and located in any county with population density of 100 or fewer persons per square mile, based upon the most recently available population statistics from the Bureau of the Census, is limited to:

* * * * *

(2) The power of each fixed or base station transmitting in the 1995–2000 MHz, the 2110–2155 MHz 2155–2180 MHz band, 2180–2200, or 3700–4200 MHz band and situated in any geographic location other than that described in paragraph (d)(1) of this section is limited to:

* * * * *

(4) Fixed, mobile, and portable (hand-held) stations operating in the 1710–1755 MHz band and mobile and portable stations operating in the 1695–1710 MHz, 1755–1780 MHz, and 3700–4200 MHz bands are limited to 1 watt EIRP. Fixed stations operating in the 1710–1755 MHz band are limited to a maximum antenna height of 10 meters above ground. Mobile and portable stations operating in these bands must employ a means for limiting power to the minimum necessary for successful communications.

* * * * *

■ 13. Amend § 27.53 by revising paragraph (h)(1) to read as follows:

§ 27.53 Emission limits.

* * * * *

(h) *AWS emission limits*—(1) *General protection levels.* Except as otherwise specified below, for operations in the 1695–1710 MHz, 1710–1755 MHz, 1755–1780 MHz, 1915–1920 MHz, 1995–2000 MHz, 2000–2020 MHz, 2110–2155 MHz, 2155–2180 MHz, 2180–2200 MHz, and 3700–4200 MHz bands, the power of any emission outside a licensee's frequency block shall be attenuated below the transmitter power (P) in watts by at least $43 + 10 \log_{10} (P)$ dB.

* * * * *

■ 14. Amend § 27.55 by adding paragraph (d) to read as follows:

§ 27.55 Power strength limits.

* * * * *

(d) *Power flux density for stations operating in the 3700–4200 MHz band.* The predicted or measured Power Flux Density from any Base Station operating in the 3700–4200 MHz bands at any location on the geographical border of a licensee's service area shall not exceed $-76 dBm/m^2/MHz$ (measured at 1.5 meters above ground) unless the adjacent affected service area licensee(s) agree(s) to a different PFD.

■ 15. Amend § 27.57 by revising paragraph (c) to read as follows:

§ 27.57 International coordination.

* * * * *

(c) Operation in the 1695–1710 MHz, 1710–1755 MHz, 1755–1780 MHz, 1915–1920 MHz, 1995–2000 MHz, 2000–2020 MHz, 2110–2155 MHz, 2155–2180 MHz, 2180–2200 MHz, and 3700–4200 MHz bands is subject to international agreements with Mexico and Canada.

■ 16. Add subpart O to read as follows:

Subpart O—3700–4200 MHz Band

Sec.

§ 27.1400 3700–4200 MHz band subject to competitive bidding.

Mutually exclusive initial applications for 3700–4200 MHz band licenses are subject to competitive bidding. The general competitive bidding procedures set forth in 47 CFR part 1, subpart Q of this chapter will apply unless otherwise provided in this subpart.

§ 27.1401 Designated entities in the 3700–4200 MHz band.

(a) *Eligibility for small business provisions*—(1) *Definitions*—(i) *Small business.* A small business is an entity that, together with its affiliates, its controlling interests, and the affiliates of its controlling interests, has average gross revenues not exceeding $55 million for the preceding three (3) years.

(ii) *Very small business.* A very small business is an entity that, together with its affiliates, its controlling interests, and the affiliates of its controlling interests, has average gross revenues not exceeding $20 million for the preceding three (3) years.

(2) *Bidding credits.* A winning bidder that qualifies as a small business, as defined in this section, or a consortium of small businesses may use the bidding credit of 15 percent, as specified in § 1.2110(f)(2)(i)(C) of this chapter. A winning bidder that qualifies as a very small business, as defined in this section, or a consortium of very small businesses may use the bidding credit of 25 percent, as specified in § 1.2110(f)(2)(i)(B) of this chapter.

(b) *Eligibility for rural service provider bidding credit.* A rural service provider, as defined in § 1.2110(f)(4)(i) of this chapter, that has not claimed a small business bidding credit may use the bidding credit of 15 percent specified in § 1.2110(f)(4) of this chapter.

[FR Doc. 2018–18288 Filed 8–28–18; 8:45 am]

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FEDERAL REGISTER

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Part III

The President

Proclamation 9774—Women's Equality Day, 2018

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Wednesday, August 29, 2018

Presidential Documents

Title 3—

The President

Proclamation 9774 of August 24, 2018

Women's Equality Day, 2018

By the President of the United States of America

A Proclamation

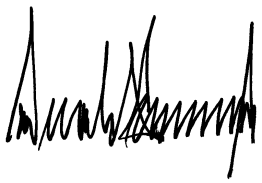
On Women's Equality Day, we commemorate the ratification of the 19th Amendment to the Constitution, which secured for women the right to vote. The anniversary of this milestone is an appropriate time to reflect on the remarkable accomplishments of women in every facet of American life. It is also an opportunity to honor women for their leadership in service to their families, their communities, and the Nation.

In the same spirit of the 19th Amendment, we must continue to seek an environment of opportunity for all women. My Administration, therefore, continues to support the advancement of women throughout our country. The economy is growing and increasing opportunities to work and thrive as a result of our economic policies, including the enactment of the Tax Cuts and Jobs Act and the elimination of unnecessary and burdensome regulations. The unemployment rate for women has recently reached a 65-year low. We also fought for working parents by securing a doubling of the child tax credit, the creation of the dependent care credit, and the largest ever expansion of the child and dependent care credit. These family-friendly reforms will give much-needed financial relief to hardworking parents. Additionally, my Administration recognizes the challenges faced by mothers in the workplace due to lack of paid leave and affordable, high-quality childcare. That is why my budget this year, as it did last year, includes a national paid parental leave program. We continue to call on the Congress to enact such a program into law to help women thrive in the labor force and provide for their families. Further, we are working to enhance access to education and training in science, technology, engineering, and mathematics for the next generation of women pursuing careers in these fields.

Today, we celebrate the passion and unwavering dedication of the women who struggled and persevered in the fight for suffrage, and we recognize the countless ways that women strengthen the fabric of the Nation. We all benefit from the leadership and ingenuity of women in education, medicine, government, law, business, military service, and every other field contributing to the greatness of this Nation.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim August 26, 2018, as Women's Equality Day. I call upon the people of the United States to celebrate the achievements of women and observe this day with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of August, in the year of our Lord two thousand eighteen, and of the Independence of the United States of America the two hundred and forty-third.



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LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List August 17, 2018

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