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

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Part 93

[Docket No. APHIS–2016–0050]

RIN 0579–AE38

### Branding Requirements for Bovines Imported Into the United States From Mexico

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the regulations regarding the branding of bovines imported into the United States from Mexico. We are taking this action at the request of the Government of Mexico to address issues that have arisen with the branding requirement for these bovines. These changes will help prevent inconsistencies in branding that can result in bovines being rejected for import into the United States.

**DATES:** Effective January 14, 2019.

**FOR FURTHER INFORMATION CONTACT:** Dr. Betzaida Lopez, Senior Staff Veterinarian, National Import Export Services, Policy, Permitting, and Regulatory Services, VS, APHIS, 4700 River Road, Unit 39, Riverdale, MD 20737–1231; (301) 851–3300.

#### SUPPLEMENTARY INFORMATION:

#### Background

The regulations in 9 CFR part 93 prohibit or restrict the importation of certain animals, birds, and poultry into the United States to prevent the introduction of communicable diseases of livestock and poultry. Subpart D of part 93 (§§ 93.400 through 93.436, referred to below as the regulations) governs the importation of ruminants; within subpart D, § 93.427 specifically addresses the importation of cattle and

other bovines from Mexico into the United States.

On April 12, 2018, we published in the **Federal Register** (83 FR 15756–15758, Docket No. APHIS–2016–0050) a proposal<sup>1</sup> to amend the regulations by changing the branding requirements for steers and spayed heifers from Mexico and the branding option for sexually intact bovines from Mexico. At present, cattle from Mexico carry at least two forms of identification, generally a brand and an approved eartag. Cattle imported from Mexico for other than immediate slaughter are required to be branded with an “M” for steers, an “Mx” for spayed heifers, and an “MX” brand or tattoo for breeding bovines. This rule will change the requirements to increase the size of the brands, simplify them to a simple “M,” and move the brands for sexually intact bovines to the right shoulder of the animal. These changes will help reduce or eliminate branding errors, which in turn would reduce the need for rebranding and the incidence of cattle rejections at port-of-entry inspection. The changes to the description of the placement of the brand for steers and spayed heifers clarifies the requirement by making the description more specific.

We solicited comments concerning our proposal for 60 days ending June 11, 2018. We received 12 comments by that date. They were from veterinary and animal welfare organizations, agriculture and trade associations, and private citizens. Six of the commenters supported the rule as proposed. The remaining commenters asked questions or expressed concerns about the rule. The questions and concerns are discussed below.

One commenter suggested adding a visible, legible, and unequivocal name to the branding requirements for bovines in § 93.427(e)(3). The commenter stated that this would ensure consistency and uniformity of the brands.

It is not clear which name the commenter thinks should be added to the brand; however, we do not agree that adding a name to the brand would ensure consistency and uniformity. The larger size and revised placement of the

brands will provide visual identification of the animals’ origin. Furthermore, these animals will be bearing official ear tags that will aid in tracing the animals back to their farm of origin in the event that any of them are found to be affected with a disease of concern.

One commenter stated that people may have the same brands and locations registered in States that maintain a brand registry. The commenter expressed concern that changing the brand requirements for cattle imported from Mexico could result in confusion and disputes.

It was not clear from the comment if the concern was about changes to the brand for feeder and slaughter cattle or for sexually intact cattle. The Animal and Plant Health Inspection Service (APHIS) notes that the regulations currently require an “M” brand on the right hip for steers imported from Mexico. There have been no issues with the current requirements. If the commenter’s concern is with sexually intact cattle, APHIS notes that less than 1 percent of cattle imported into the United States are sexually intact animals from Mexico. The likelihood that the change to the branding requirements for such a small number of cattle will result in confusion is low. Furthermore, the option to identify sexually intact cattle from Mexico with an ear tattoo remains available. We are making no changes to the rule in response to this comment.

Three commenters recommended that APHIS prioritize the development of alternatives to hot-iron branding. Two of the commenters specifically mentioned electronic animal identification as an alternative to branding.

Another commenter stated that while they strongly support the use of electronic eartags and the sharing of electronic information between the United States and Mexico for purposes of animal disease traceability, they also supported the retention of branding as the only permanent method of identification. The commenter stated that eartags are easily removed or lost and a permanent form of identification is necessary to protect the health of the U.S. herd.

APHIS actively monitors advances in animal identification. However, as the one commenter noted, eartags may be lost and are readily removable, and cannot be considered a permanent form

<sup>1</sup> To view the proposed rule, supplementary document, and the comments we received, go to <http://www.regulations.gov/#/docketDetail;D=APHIS-2016-0050>.



of identification. For this reason we require permanent identification such as a brand or tattoo for imported live bovines. This permanent identification allows APHIS to trace an animal back to the country of origin in the event that the animal shows symptoms of a disease.

A group of three industry organizations expressed concern that the proposed movement of the M brand from the hip to the shoulder for imported breeding cattle and the increased size of the brand would result in lower value for such hides when used for leather. The commenters stated that they would prefer to see the identification requirements for imported breeding cattle be the same as the requirements for feeder cattle, and for cattle imported from Mexico to have the same requirements as cattle imported from Canada.

We agree with the commenters that harmonizing animal identification requirements is desirable. However, because of the risk of introducing brucellosis into the United States, all Mexican feeder cattle are spayed or neutered before being exported to the United States. Sexually intact cattle (that is, breeding animals) are quarantined and tested for bovine tuberculosis and brucellosis at the border. We need to differentiate between breeding and non-breeding cattle imported from Mexico not only at the ports so we may quarantine and test them accordingly, but also through the life of the animal. For example, if an animal identified as a spayed heifer calves, we know that Mexico's spaying procedures have not been followed and we may have to consider changes to the import requirements to safeguard against the introduction of brucellosis from Mexico.

With respect to the larger brands potentially reducing the value of the hides, we anticipate that the new requirements will reduce the likelihood of blotching and therefore the need for rebranding, which also reduces the value of the hides.

As we noted above, sexually intact cattle from Mexico represent a very small percentage of cattle imported into the United States from Mexico, so the number of hides affected by the change to a shoulder brand should not be great. Ear tattoos are also still an option for sexually intact cattle.

One commenter stated that the rule should not characterize hot-iron branding as humane because branding causes pain and distress. The commenter cited both veterinary medical research and international standards in support of their statement.

The proposed rule was referring to the regulations in § 93.427(e)(3), which call for sexually intact bovines to be permanently and humanely identified. We note that those regulations provide for the use of tattoos, freeze brands, and other methods in addition to hot iron branding.

One commenter stated that the rule should specifically identify tattooing as an acceptable alternative. The commenter stated that § 93.427(e)(3) currently provides for the use of tattoos for sexually intact bovines and asked why tattooing is specifically cited as an acceptable method of control for bovine spongiform encephalopathy (BSE), but not for tuberculosis. The commenter further stated that because a tattoo inside the ear is not visible from a distance, it is assumed that the ability to read without close examination is not a criterion for acceptable identification techniques.

The commenter is correct that tattooing continues to be an option for sexually intact cattle from Mexico. However, we do not consider tattooing a method of control for BSE; instead, it is a means of identifying non-U.S.-origin cattle that are likely to remain in the population for years. Breeding cattle are usually higher-value animals, and therefore we have always provided the option of tattooing them. In addition, the number of imports of breeding cattle is so small that traceback would be relatively easy in the event that one of these animals was diagnosed with a disease. In contrast, the number of feeder cattle imported into the United States is very large. For these animals, the brand serves not only as identification of to prevent commingling with U.S.-origin cattle as required by some States, but also differentiates these animals from breeding animals. This is important, as we explained above, to ensure that Mexico's spaying procedures are being followed and to safeguard against the introduction of brucellosis from Mexico.

One commenter stated that until branding is replaced as an identification method, APHIS should investigate pain control measures, such as analgesics or anti-inflammatories, and to require relief from the pain associated with hot iron branding.

Requiring the use of pain control measures in association with hot-iron branding is outside the scope of APHIS' regulatory authority. We are making no changes in response to this comment.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

#### *Executive Orders 12866 and 13771 and Regulatory Flexibility Act*

This final rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866. Further, APHIS considers this rule to be a deregulatory action under Executive Order 13771 as the action may result in cost savings. In accordance with guidance on complying with Executive Order 13771, the primary estimate of the cost savings (net social welfare gain) for this rule is \$181,300. This value is the mid-point estimate of cost savings annualized in perpetuity using a 7 percent discount rate.

In accordance with 5 U.S.C. 604, we have performed a final regulatory flexibility analysis, which is summarized below, regarding the economic effects of this rule on small entities. Copies of the full analysis are available on the *Regulations.gov* website (see footnote 1 in this document for a link to *Regulations.gov*) or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

This final rule will amend the regulations in 9 CFR part 93 to change the identification requirements for bovines imported from Mexico. At present, cattle from Mexico carry at least two forms of identification, generally a brand and an approved eartag. Cattle imported from Mexico for other than immediate slaughter are required to be branded with an "M" for steers, an "Mx" for spayed heifers, and an "MX" brand or tattoo for breeding bovines. With this rule all bovines imported from Mexico will be branded with a single "M" to avoid branding errors. In order to distinguish between feeder and breeding cattle, the brand for steers and spayed heifers will be placed on the back hip and the brand for breeding cattle will be placed on the shoulder. Cattle imported from Mexico will still require an approved eartag.

The new identification requirements will reduce if not eliminate branding errors, reducing the need for rebranding and the incidence of cattle rejections at port-of-entry inspection. Revenue from hides accounts for about 75 percent of the byproduct-value of beef cattle. Damage from rebranding can reduce hide value. Also, re-inspection due to branding errors increases transaction costs. Currently, a \$4 inspection fee per head is billed to the broker who in turn charges the exporter. The single "M"

brand will both minimize hide damage and the need for re-inspections. Because the approved eartag is a current requirement, we do not anticipate any additional costs would be incurred.

Entities that may be impacted by the rule fall into various categories of the North American Industry Classification System. The majority of these businesses are small entities.

#### *Executive Order 12372*

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 2 CFR chapter IV.)

#### *Executive Order 12988*

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

#### **Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the burden requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579-0040.

#### *E-Government Act Compliance*

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this rule, please contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851-2483.

#### **List of Subjects in Part 93**

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR part 93 as follows:

### **PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, FISH, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS**

■ 1. The authority citation for part 93 continues to read as follows:

**Authority:** 7 U.S.C. 1622 and 8301-8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

■ 2. Section 93.427 is amended by revising paragraphs (c)(1) and (e)(3)(i) to read as follows:

#### **§ 93.427 Cattle and other bovines from Mexico.**

\* \* \* \* \*

(c) \* \* \*

(1) Each steer or spayed heifer imported into the United States from Mexico shall be identified with a distinct, permanent, and legible “M” mark applied with a freeze brand, hot iron, or other method prior to arrival at a port of entry, unless the steer or spayed heifer is imported for slaughter in accordance with § 93.429. The “M” mark shall be between 3 inches (7.5 cm) and 5 inches (12.5 cm) high and wide, and shall be applied to each animal’s right hip, within 4 inches (10 cm) of the midline of the tailhead (that is, the top of the brand should be within 4 inches (10 cm) of the midline of the tailhead, and placed above the hook and pin bones). The brand should also be within 18 inches (45.7 cm) of the anus.

\* \* \* \* \*

(e) \* \* \*

(3) \* \* \*

(i) An “M” mark properly applied with a freeze brand, hot iron, or other method, and easily visible on the live animal and on the carcass before skinning. Such a mark must be between 3 inches (7.5 cm) and 5 inches (12.5 cm) high and wide, and must be applied to the upper right front shoulder of each animal; or

\* \* \* \* \*

Done in Washington, DC, this 10th day of December 2018.

**Kevin Shea,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2018-27150 Filed 12-13-18; 8:45 am]

**BILLING CODE 3410-34-P**

### **DEPARTMENT OF TRANSPORTATION**

#### **Federal Aviation Administration**

#### **14 CFR Part 39**

[Docket No. FAA-2018-0802; Product Identifier 2018-NM-082-AD; Amendment 39-19525; AD 2018-25-14]

**RIN 2120-AA64**

#### **Airworthiness Directives; Fokker Services B.V. Airplanes**

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for all Fokker Services B.V. Model F28 Mark 0070 and 0100 airplanes. This AD was prompted by reports of electrical arcing between the auxiliary power unit (APU) starter motor positive terminal and the APU fuel drain line. This AD requires the removal of certain clamps and replacement of the flexible APU fuel drain line. We are issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective January 18, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 18, 2019.

**ADDRESSES:** For service information identified in this final rule, contact Fokker Services B.V., Technical Services Dept., P.O. Box 1357, 2130 EL Hoofddorp, the Netherlands; telephone +31 (0)88-6280-350; fax +31 (0)88-6280-111; email [technicalservices@fokker.com](mailto:technicalservices@fokker.com); internet <http://www.myfokkerfleet.com>. You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195. It is also available on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2018-0802.

#### **Examining the AD Docket**

You may examine the AD docket on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2018-0802; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket

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

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

**SUPPLEMENTARY INFORMATION:**

**Discussion**

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Fokker Services B.V. Model F28 Mark 0070 and 0100 airplanes. The NPRM published in the **Federal Register** on September 28, 2018 (83 FR 49020). The NPRM was prompted by reports of electrical arcing between the APU starter motor positive terminal and the APU fuel drain line. The NPRM proposed to require the removal of certain clamps and replacement of the flexible APU fuel drain line.

We are issuing this AD to address reports of electrical arcing between the APU starter motor positive terminal and the APU fuel drain line, which could lead to a fire during APU start and possibly result in damage to the airplane.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2017-0008, dated January 16, 2017 (referred to after this as the Mandatory Continuing Airworthiness Information, or “the MCAI”), to correct an unsafe condition for all Fokker Services B.V. Model F28 Mark 0070 and 0100 airplanes. The MCAI states:

Reports were received of electrical arcing between the auxiliary power unit (APU) starter motor positive terminal and the APU fuel drain line. Investigation showed that these events were due to contact between the metal braiding on the APU fuel drain line and the positive terminal of the APU starter motor.

This condition, if not corrected, could lead to a fire during APU start, possibly resulting in damage to the aeroplane.

In response to these findings, Fokker issued Service Bulletin (SB) SBF100-49-023, later amended by SB Change Notification (SBCN), with instructions to install two additional clamps on the APU fuel supply line and the flexible APU fuel drain line. Consequently, CAA-NL [Civil Aviation Authority-the Netherlands] issued the Netherlands AD 92-139 [which corresponds to FAA AD 95-21-20, Amendment 39-9407 (60 FR 53857, October 18, 1995) (“AD 95-21-20”)] to require the actions described in Fokker SBF100-49-023.

Since that [the Netherlands] AD was issued, following reports of arcing and chafing damage to the APU fuel drain line, the investigation revealed that the two additional clamps and the instructions in SBF100-49-023 would not meet the intent of ensuring sufficient clearance between the APU fuel drain line and the positive terminal of the APU starter motor.

To address this potential unsafe condition, Fokker Services [B.V.] published SBF100-49-037 to introduce a new flexible APU fuel drain line that is one inch shorter and has one elbow flange, thus enabling to restore sufficient clearance with the positive terminal of the APU starter motor.

For the reasons described above, this AD supersedes CAA-NL [the Netherlands] AD 92-139 and requires replacement of the flexible APU fuel drain line, removal of the additional clamps introduced by SBF100-49-023, and a check to verify sufficient clearance between the APU fuel drain line and the positive terminal of the APU starter motor.

You may examine the MCAI in the AD docket on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2018-0802.

**Comments**

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

**Conclusion**

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

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

**Related Service Information Under 1 CFR Part 51**

Fokker Services B.V. has issued Fokker Service Bulletin SBF100-49-037, dated October 31, 2016. This service information describes procedures for removing certain clamps and replacing the flexible APU fuel drain line (which includes making sure there is sufficient clearance between the new APU fuel drain line and the positive terminal of the APU starter motor and that the earth lead is not chafing against the fuel supply or the fuel drain line). This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

**Costs of Compliance**

We estimate that this AD affects 5 airplanes of U.S. registry. We estimate the following costs to comply with this AD:

ESTIMATED COSTS			
Labor cost	Parts cost	Cost per product	Cost on U.S. operators
1 work-hour × \$85 per hour = \$85 .....	\$963	\$1,048	\$5,240

**Authority for This Rulemaking**

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

We are issuing this rulemaking under the authority described in Subtitle VII,

Part A, Subpart III, Section 44701: “General requirements.” Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on

products identified in this rulemaking action.

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has

delegated the authority to issue ADs applicable to transport category airplanes and associated appliances to the Director of the System Oversight Division.

### Regulatory Findings

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

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

(1) Is not a “significant regulatory action” under Executive Order 12866,

(2) Is not a “significant rule” under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

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

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

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

#### 2018–25–14 Fokker Services B.V.:

Amendment 39–19525; Docket No. FAA–2018–0802; Product Identifier 2018–NM–082–AD.

#### (a) Effective Date

This AD is effective January 18, 2019.

#### (b) Affected ADs

This AD affects AD 95–21–20, Amendment 39–9407 (60 FR 53857, October 18, 1995) (“AD 95–21–20”).

#### (c) Applicability

This AD applies to Fokker Services B.V. Model F28 Mark 0070 and 0100 airplanes,

certificated in any category, all serial numbers.

#### (d) Subject

Air Transport Association (ATA) of America Code 49, Airborne auxiliary power.

#### (e) Reason

This AD was prompted by reports of electrical arcing between the auxiliary power unit (APU) starter motor positive terminal and the APU fuel drain line. We are issuing this AD to address this unsafe condition, which could lead to a fire during APU start and possibly result in damage to the airplane.

#### (f) Compliance

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

#### (g) Modification

Within 12 months after the effective date of this AD: Remove the two additional clamps, part number (P/N) MS21919WCH5 and P/N MS21919WCH13, and replace APU fuel drain line P/N D67066–409 with a new APU fuel drain line P/N W67066–401, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–49–037, dated October 31, 2016.

#### (h) Terminating Actions for AD 95–21–20

Accomplishing the actions required by paragraph (g) of this AD terminates all requirements of AD 95–21–20.

#### (i) Parts Installation Prohibition

No person may install APU fuel drain line P/N D67066–409 after modification of an airplane as required by paragraph (g) of this AD.

#### (j) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

#### (k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2017–0008, dated January 16, 2017, for related information. This MCAI may be found in the AD docket on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA–2018–0802.

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

#### (l) Material Incorporated by Reference

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

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

(i) Fokker Service Bulletin SBF100–49–037, dated October 31, 2016.

(ii) [Reserved]

(3) For service information identified in this AD, contact Fokker Services B.V., Technical Services Dept., P.O. Box 1357, 2130 EL Hoofddorp, the Netherlands; telephone +31 (0)88–6280–350; fax +31 (0)88–6280–111; email [technicalservices@fokker.com](mailto:technicalservices@fokker.com); internet <http://www.myfokkerfleet.com>.

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

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

Issued in Des Moines, Washington, on November 29, 2018.

**James Cashdollar,**

*Acting Director, System Oversight Division, Aircraft Certification Service.*

[FR Doc. 2018–26630 Filed 12–13–18; 8:45 am]

**BILLING CODE 4910–13–P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2018-0809; Product Identifier 2018-NM-092-AD; Amendment 39-19524; AD 2018-25-13]

RIN 2120-AA64

**Airworthiness Directives; Dassault Aviation Model FALCON 2000 Airplanes**

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for certain Dassault Aviation Model FALCON 2000 airplanes. This AD was prompted by a report of chafing of a wire bundle located at the bottom of the right hand (RH) electrical cabinet. This AD requires a one-time general visual inspection of the wiring bundle for damage, measurement of the clearance between the metallic plate and the wiring bundle, and corrective actions if necessary. We are issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective January 18, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 18, 2019.

**ADDRESSES:** For service information identified in this final rule, contact Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201-440-6700; internet <http://www.dassaultfalcon.com>. You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195. It is also available on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2018-0809.

**Examining the AD Docket**

You may examine the AD docket on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2018-0809; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other

information. The address for Docket Operations (phone: 800-647-5527) is U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

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

**SUPPLEMENTARY INFORMATION:**

**Discussion**

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Dassault Aviation Model FALCON 2000 airplanes. The NPRM published in the **Federal Register** on October 9, 2018 (83 FR 50537). The NPRM was prompted by a report of chafing of a wire bundle located at the bottom of the RH electrical cabinet. The NPRM proposed to require a one-time general visual inspection of the wiring bundle for damage, measurement of the clearance between the metallic plate and the wiring bundle, and corrective actions if necessary.

We are issuing this AD to address chafing of a wire bundle located at the bottom of the RH electrical cabinet, which may cause damage to wires within the bundle, and, if not detected and corrected, could lead to improper functioning of airplane systems (such as loss of wing anti-icing or wing anti-icing inoperative indication, loss of normal braking indication, and loss of “No take-off” indication), which could result in reduced control of the airplane.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2018-0114, dated May 23, 2018, (referred to after this as the Mandatory Continuing Airworthiness Information, or “the MCAI”), to correct an unsafe condition for certain Dassault Aviation Model FALCON 2000 airplanes. The MCAI states:

One Falcon 2000 aeroplane experienced some chafing of a wire bundle located at the bottom of the right-hand (RH) electrical cabinet (between Frames 4 and 5). The wire loom interfered with a metallic (ground) plate of terminal strip 700J and at least 12 wires were damaged. This wire loom includes 250 wires and in case of chafing, any wire may be damaged.

This condition, if not detected and corrected, could lead to improper functioning of aeroplane systems [such as loss of wing anti-icing or wing anti-icing inoperative

indication, loss of normal braking indication, and loss of “No take-off” indication], possibly resulting in reduced control of the aeroplane.

To address this potential unsafe condition, Dassault developed a modification M3889 to improve the clearance between the metallic plate and the wire loom, and published the SB [Dassault Aviation Service Bulletin F2000-436] to inspect and modify aeroplanes in service.

For the reasons described above, this [EASA] AD requires a one-time inspection of the wiring bundle for interference or damage, measurement of the clearance between the metallic plate and the wiring bundle, and depending on findings, modification of the aeroplane by cutting out the lower part of the ground plate of terminal strip 700J and adding an edge protection to prevent interference. Aeroplanes that do not have a metallic plate installed are not affected by this [EASA] AD.

You may examine the MCAI in the AD docket on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2018-0809.

**Comments**

We gave the public the opportunity to participate in developing this final rule. We have considered the comments received. Lucas Kline indicated his support for the NPRM.

**Conclusion**

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

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

**Related Service Information Under 14 CFR Part 51**

Dassault Aviation has issued Service Bulletin F2000-436, dated September 28, 2017. This service information describes procedures for a one-time general visual inspection of the wiring bundle for damage (including chafing), measurement of the clearance between the metallic plate and the wiring bundle, and corrective actions. Corrective actions include modification of the airplane by cutting out the lower part of the ground plate of terminal strip 700J and adding an edge protection to prevent interference and replacement of damaged wires. This service information is reasonably available because the interested parties have access to it through their normal course

of business or by the means identified in the **ADDRESSES** section.

### Costs of Compliance

We estimate that this AD affects 195 airplanes of U.S. registry. We estimate

the following costs to comply with this AD:

#### ESTIMATED COSTS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
4 work-hours × \$85 per hour = \$340 .....	\$0	\$340	\$66,300

We estimate the following costs to do the necessary on-condition action that would be required based on the results

of any required actions. We have no way of determining the number of aircraft

that might need this on-condition action:

#### ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost *	Cost per product
2 work-hours × \$85 per hour = \$170 .....	\$0	\$170

\* We have received no definitive data for the parts cost for the on-condition actions.

### Authority for This Rulemaking

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

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

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

### Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on

the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

(1) Is not a "significant regulatory action" under Executive Order 12866,  
(2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

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

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

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

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

### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

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

#### 2018–25–13 Dassault Aviation:

Amendment 39–19524; Docket No.

FAA–2018–0809; Product Identifier 2018–NM–092–AD.

#### (a) Effective Date

This AD is effective January 18, 2019.

#### (b) Affected ADs

None.

#### (c) Applicability

This AD applies to Dassault Aviation Model FALCON 2000 airplanes, certificated in any category, manufacturer serial numbers 70 through 231 inclusive.

#### (d) Subject

Air Transport Association (ATA) of America Code 24, Electrical power.

#### (e) Reason

This AD was prompted by a report of chafing of a wire bundle located at the bottom of the right hand (RH) electrical cabinet. We are issuing this AD to address such chafing, which may cause damage to wires within the bundle, and, if not detected and corrected, could lead to improper functioning of airplane systems (such as loss of wing anti-icing or wing anti-icing inoperative indication, loss of normal braking indication, and loss of "No take-off" indication), which could result in reduced control of the airplane.

#### (f) Compliance

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

#### (g) Inspection

Within 25 months after the effective date of this AD, for airplanes equipped with a metallic plate at the bottom of the RH electrical cabinet, do the following actions as specified in paragraphs (g)(1) and (g)(2) of this AD.

(1) Perform a general visual inspection of the wiring bundle for damage (including chafing), in accordance with the Accomplishment Instructions of Dassault

Aviation Service Bulletin F2000–436, dated September 28, 2017.

(2) Measure the clearance between the metallic plate and the wire bundle at the bottom of the RH electrical cabinet in accordance with the Accomplishment Instructions of Dassault Aviation Service Bulletin F2000–436, dated September 28, 2017.

#### (h) Corrective Action

(1) If, during the inspection required by paragraph (g)(1) of this AD, any damage is found, before further flight, replace all damaged wires using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or the European Aviation Safety Agency (EASA); or Dassault Aviation's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(2) If, during the measurement required by paragraph (g)(2) of this AD, the detected clearance is less than the criteria specified in Dassault Aviation Service Bulletin F2000–436, dated September 28, 2017, before further flight, modify the metallic plate in accordance with the Accomplishment Instructions of Dassault Aviation Service Bulletin F2000–436, dated September 28, 2017.

#### (i) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

#### (j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2018–0114, dated May 23, 2018, for related information. This MCAI may be found in the AD docket on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA–2018–0809.

(2) For more information about this AD, contact Tom Rodriguez, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des

Moines, WA 98198; telephone and fax 206–231–3226.

#### (k) Material Incorporated by Reference

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

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

(i) Dassault Service Bulletin F2000–436, dated September 28, 2017.

(ii) [Reserved]

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

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

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

Issued in Des Moines, Washington, on November 28, 2018.

**James Cashdollar,**

*Acting Director, System Oversight Division, Aircraft Certification Service.*

[FR Doc. 2018–26629 Filed 12–13–18; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA–2018–0791; Product Identifier 2018–NM–043–AD; Amendment 39–19523; AD 2018–25–12]

**RIN 2120–AA64**

#### Airworthiness Directives; Airbus SAS Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for certain Airbus SAS Model A350–941 airplanes. This AD was prompted by a determination that certain holes for the vertical tail plane (VTP) tension bolts connection are not properly protected against corrosion. This AD requires modifying the VTP tension bolts connection by adding sealant and protective treatment to the head of the

connection, at the barrel nut cavities, and in the surrounding area. We are issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective January 18, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 18, 2019.

**ADDRESSES:** For the incorporation by reference (IBR) material described in the “Related IBR material under 1 CFR part 51” section in **SUPPLEMENTARY INFORMATION**, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 1000; email [ADs@easa.europa.eu](mailto:ADs@easa.europa.eu); internet [www.easa.europa.eu](http://www.easa.europa.eu). You may find this IBR material on the EASA website at <https://ad.easa.europa.eu>. You may view this IBR material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at <http://www.regulations.gov>.

#### Examining the AD Docket

You may examine the AD docket on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA–2018–0791; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations (phone: 800–647–5527) is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

#### FOR FURTHER INFORMATION CONTACT:

Kathleen Arrigotti, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3218.

#### SUPPLEMENTARY INFORMATION:

##### Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus SAS Model A350–941 airplanes. The NPRM published in the **Federal Register** on September 14, 2018 (83 FR 46677). The NPRM was prompted by a determination that certain holes for the VTP tension bolts connection are not properly protected against corrosion.



The NPRM proposed to require modifying the VTP tension bolts connection by adding sealant and protective treatment to the head of the connection, at the barrel nut cavities, and in the surrounding area.

We are issuing this AD to address corrosion of the VTP tension bolts connection, which could reduce the structural integrity of the VTP, and could ultimately lead to reduced controllability of the airplane.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2018–0045, dated February 15, 2018; corrected February 22, 2018 (“EASA AD 2018–0045”) (also referred to as the Mandatory Continuing Airworthiness Information, or “the MCAI”), to correct an unsafe condition for certain Airbus SAS Model A350–941 airplanes. The MCAI states:

It was identified that the section 19 holes for the Vertical Tail Plane (VTP) tension bolts connection are not properly protected against corrosion.

This condition, if not corrected, could reduce the structural integrity of the VTP [and could ultimately lead to reduced controllability of the airplane].

To address this unsafe condition, Airbus developed production mod 108307 and mod 110696 to improve protection against corrosion, and issued the SB [Service Bulletin A350–55–P002] to provide in-service modification instructions.

For the reasons described above, this [EASA] AD requires a modification by adding sealant and protective treatment to the head of the section 19 VTP tension bolts connection, at the barrel nut cavities and in the surrounding area.

This [EASA] AD was corrected to clarify the text of the “Modification”.

## Comments

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

## Support for the NPRM and New Process

The Air Line Pilots Association, International (ALPA) and Delta Air Lines (Delta) indicated their support for the NPRM, which was the first AD action using a new process that refers to the EASA AD as the primary source of information for compliance with the FAA AD requirements. Delta noted that the proposed AD would not disallow the “later approved revisions” language typically used in EASA ADs. Delta stated it appreciates the flexibility that the “or later versions of the Service Bulletin” language in typical EASA ADs provides, and hopes that flexibility can remain an option for future ADs.

Delta also contacted the FAA prior to posting its comments and noted that the new format for this Airbus AD is cleaner. Delta also stated that it sees many benefits to this new AD process.

The FAA acknowledges the comments from Delta. Our intent is to rely on the language in the EASA ADs whenever possible in order to simplify FAA ADs. Any differences required by the FAA will continue to be included in the FAA AD. We note that we plan to use this new process initially with certain EASA ADs that are suited to this process.

## Request To Clarify if Reporting Is Not Required

Delta requested that we include a statement in the proposed AD noting that reporting is not required. Delta noted that in service bulletins containing Required for Compliance (RC) language, requests to report findings are generally in the procedures section, making the reporting RC. Delta added that including a statement in the proposed AD confirming that reporting is not required is helpful. When reporting is mandatory, Delta recommended including a “reporting requirements” paragraph in the AD that permits various reporting methods, includes the “what/how/when,” and includes a compliance time of 30 days from the return to service (not from a finding).

We agree with the commenter that if our AD does not require reporting, and reporting is within an RC paragraph of the service information referenced in the associated EASA AD, our AD should specify “no reporting” in the body of the AD. However, such wording is not necessary for this AD. EASA AD 2018–0045 does not require reporting and the service information referenced in EASA AD 2018–0045 does not specify reporting in the RC paragraphs. Therefore, we have not changed this AD in this regard.

We also agree that if reporting is mandatory in our AD, we will include a “reporting requirements” paragraph that clarifies what needs to be reported and the compliance time for reporting. Regarding the compliance time suggestion, we typically match the compliance time for reporting provided in the EASA AD. If we determine it is too short or long, we may extend or shorten the compliance time as appropriate.

## Request To Identify Certain Steps as Non-RC

Delta requested that we add an exception to our proposed AD noting that reapplication of corrosion inhibiting compounds (CICs) is not RC.

Delta noted that all procedures and tests in the service information referenced in EASA AD 2018–0045 are RC, and the procedure steps include things like reapplying CICs. Delta stated that if the service information or NPRM was not related to corrosion, those procedure steps might include applying CICs, but the CIC steps should not be RC. Delta explained that since the choice of CICs is under the operator’s control under their corrosion prevention and control program (CPCP), the operator may now have to obtain an alternative method of compliance (AMOC) to use their standard CIC rather than what is called out in the service information, or to use an old out-of-date CIC just because it is listed in the service information. Delta recommended that RC tags never be applied to steps that call for restoring CIC unless that is the driving force in the AD.

We acknowledge that steps that do not address the identified unsafe condition should not be identified as RC steps. However, for this AD, the instructions provided in the service information, which include applying corrosion preventive compounds (CPCs), have been identified as necessary to address the unsafe condition. If an operator’s CPCP includes an alternative material and the operator wants to use it instead of the material listed in an RC step, the operator must request an AMOC using the procedures in paragraph (i)(1) of this AD.

For future ADs, we will address this issue on a case-by-case basis. For some ADs, we might add an exception allowing the use of alternative CICs if they provide an acceptable level of safety. If operators identify CICs that are equal to or better than the CICs identified in the service information, they can request an AMOC using the procedures in paragraph (i)(1) of this AD.

## Request To Clarify Applicability

Delta requested that we revise paragraph (c) of the proposed AD to point to the airplanes (specific serial numbers) specified in the service information referenced in EASA AD 2018–0045, rather than the airplanes identified in EASA AD 2018–0045. Delta noted that the wording of the applicability paragraph of a given AD can create an undue burden on operators. Delta stated, as an example, that if the applicability paragraph states “all 350 aircraft, except those with mod x or y embodied in production” it must prove that all airplanes are not affected, and it must write an engineering document stating that its airplanes are



not affected. Delta stated that, in this example, a slight change to the wording can have a big impact. Delta suggested that if the wording in the example was changed to “this AD applies to Airbus A350 aircraft as identified in Airbus Service Bulletin A350–52–P012,” only the applicable airplanes would be identified. Delta concluded that, with revised wording, it would no longer be burdened to prove compliance for its fleet, because the applicable airplanes are listed in the service information.

We disagree with the commenter’s request. The applicability in this AD matches that in EASA AD 2018–0045 to ensure that the unsafe condition is addressed on all affected airplanes. We agree with EASA’s approach to identifying the AD applicability since affected serial numbers may change through modification of an airplane. If

airplanes are identified by serial number, rather than airplane configuration, affected airplanes may be excluded from the AD applicability. Therefore, we have not changed this AD in this regard.

**Conclusion**

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

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

**Related IBR Material Under 1 CFR Part 51**

EASA AD 2018–0045, dated February 15, 2018; corrected February 22, 2018; describes procedures for modifying the VTP tension bolts connection by adding sealant and protective treatment to the head of the connection, at the barrel nut cavities, and in the surrounding area. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section, and it is publicly available through the EASA website.

**Costs of Compliance**

We estimate that this AD affects 6 airplanes of U.S. registry. We estimate the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
50 work-hours × \$85 per hour = \$4,250 .....	\$9,200	\$13,450	\$80,700

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

Authority for This Rulemaking

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

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

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance

of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes and associated appliances to the Director of the System Oversight Division.

**Regulatory Findings**

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

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

- (1) Is not a “significant regulatory action” under Executive Order 12866,
- (2) Is not a “significant rule” under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),
- (3) Will not affect intrastate aviation in Alaska, and
- (4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

**PART 39—AIRWORTHINESS DIRECTIVES**

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

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

**§ 39.13 [Amended]**

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

**2018–25–12 Airbus SAS:** Amendment 39–19523; Docket No. FAA–2018–0791; Product Identifier 2018–NM–043–AD.

**(a) Effective Date**

This AD is effective January 18, 2019.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to Airbus SAS Model A350–941 airplanes, certificated in any category, as identified in European Aviation Safety Agency (EASA) AD 2018–0045, dated February 15, 2018; corrected February 22, 2018 (“EASA AD 2018–0045”).

**(d) Subject**

Air Transport Association (ATA) of America Code 53, Fuselage; 55, Stabilizers.

**(e) Reason**

This AD was prompted by a determination that the section 19 holes for the vertical tail plane (VTP) tension bolts connection are not properly protected against corrosion. We are issuing this AD to address corrosion of the VTP tension bolts connection, which could reduce the structural integrity of the VTP, and could ultimately lead to reduced controllability of the airplane.

**(f) Compliance**

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

**(g) Requirements**

Except as specified by paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2018–0045.

**(h) Exceptions to EASA AD 2018–0045**

(1) For purposes of determining compliance with the requirements of this AD, where EASA AD 2018–0045 refers to its effective date, this AD requires using the effective date of this AD.

(2) The “Remarks” section of EASA AD 2018–0045 does not apply to this AD.

**(i) Other FAA AD Provisions**

The following provisions also apply to this AD:

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

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

(3) *Required for Compliance (RC)*: Any RC procedures and tests identified in the service information referenced in EASA AD 2018–0045 must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator’s maintenance or inspection program without obtaining

approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

**(j) Related Information**

For more information about this AD, contact Kathleen Arrigotti, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3218.

**(k) Material Incorporated by Reference**

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

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

(i) European Aviation Safety Agency (EASA) AD 2018–0045, dated February 15, 2018; corrected February 22, 2018.

(ii) [Reserved]

(3) For EASA AD 2018–0045, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 6017; email [ADs@easa.europa.eu](mailto:ADs@easa.europa.eu); Internet [www.easa.europa.eu](http://www.easa.europa.eu). You may find this EASA AD on the EASA website at <https://ad.easa.europa.eu>. You may view this EASA AD at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. EASA AD 2018–0045 may be found in the AD docket on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA–2018–0791.

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

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

Issued in Des Moines, Washington, on November 29, 2018.

**James Cashdollar,**

*Acting Director, System Oversight Division, Aircraft Certification Service.*

[FR Doc. 2018–26536 Filed 12–13–18; 8:45 am]

**BILLING CODE 4910–13–P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA–2017–0246; Product Identifier 2017–NM–011–AD; Amendment 39–19522; AD 2018–25–11]

**RIN 2120–AA64**

**Airworthiness Directives; The Boeing Company Airplanes**

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 777–200 and –300 series airplanes equipped with Rolls-Royce Model RB211-Trent 800 engines. This AD was prompted by reports of inadequate clearance between the thermal protection system (TPS) insulation blankets and the electronic engine control (EEC) wiring, which resulted in damaged wires. This AD requires repetitive inspections of the EEC wire bundles and clips, and corrective actions if necessary. We are issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective January 18, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 18, 2019.

**ADDRESSES:** For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminister Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet <https://www.myboeingfleet.com>. You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA–2017–0246.

**Examining the AD Docket**

You may examine the AD docket on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA–2017–0246; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other

information. The address for Docket Operations (phone: 800-647-5527) is Docket Operations, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:**

Kevin Nguyen, Aerospace Engineer, Propulsion Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206-231-3555; email: [kevin.nguyen@faa.gov](mailto:kevin.nguyen@faa.gov).

**SUPPLEMENTARY INFORMATION:**

**Discussion**

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain The Boeing Company Model 777-200 and -300 series airplanes equipped with Rolls-Royce Model RB211-Trent 800 engines. The NPRM published in the **Federal Register** on April 10, 2017 (82 FR 17154). The NPRM was prompted by reports of inadequate clearance between the TPS insulation blankets and the EEC wiring, which resulted in damaged wires. The NPRM proposed to require repetitive inspections of the EEC wire bundles and clips, and corrective actions if necessary.

We are issuing this AD to address damaged wires, which could result in in-flight shutdown of the engine, or the inability to properly control thrust, and consequent reduced controllability of the airplane.

**Comments**

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

**Support for the Proposed Rule**

The Air Line Pilots Association, International (ALPA), Boeing, and Rolls-Royce all supported the NPRM.

**Request To Include Additional Service Information**

Air New Zealand (ANZ) suggested that paragraph (g) of the proposed AD could be complied with using either Boeing Special Attention Service Bulletin 777-78-0071; or Boeing Service Bulletin 777-78-0082; because certain configurations of thrust reversers (T/Rs) are not covered by Boeing Service Bulletin 777-78-0082, but are covered by Boeing Special Attention Service Bulletin 777-78-0071. ANZ noted that paragraph (h) of the proposed AD provided credit for previous actions if the previous inspections were performed in accordance with either

Boeing Special Attention Service Bulletin 777-78-0071; or Boeing Service Bulletin 777-78-0082.

American Airlines (AAL) explained that Boeing Service Bulletin 777-78-0082, Revision 1, dated June 15, 2015, is not effective to its fleet configuration and requested that paragraph (g) of the proposed AD be revised to include Boeing Special Attention Service Bulletin 777-78-0071, Revision 2, dated July 23, 2013, as an additional method of compliance for those airplanes that are identified in Boeing Special Attention Service Bulletin 777-78-0071, Revision 2, dated July 23, 2013, but not affected by Boeing Service Bulletin 777-78-0082, Revision 1, dated June 15, 2015. AAL also provided the definitions for a general visual inspection and detailed inspection from Boeing Special Attention Service Bulletin 777-78-0071, Revision 2, dated July 23, 2013, to support its justification that a general visual inspection would identify damage to components within the inspection area identified in the service information and therefore offers an equivalent level of safety to that of a detailed inspection.

Delta Air Lines (DAL) explained that Boeing Service Bulletin 777-78-0082, Revision 1, dated June 15, 2015, is not applicable to all the T/Rs affected by the proposed AD, and suggested that paragraph (g) of the proposed AD follow the same structure as AD 2016-11-16, Amendment 39-18543 (81 FR 39547, June 17, 2016) ("AD 2016-11-16"), which allows for the use of Boeing Special Attention Service Bulletin 777-78-0071, Revision 2, dated July 23, 2013, in paragraph (k)(1) of AD 2016-11-16 or Boeing Service Bulletin 777-78-0082, Revision 1, dated June 15, 2015, in paragraph (k)(2) of AD 2016-11-16, according to airplane effectivity. DAL observed that the referenced service information was acknowledged in AD 2016-11-16 to provide the same acceptable level of safety, and DAL would prefer that either service bulletin be allowed as an acceptable method of compliance for the inspections required by paragraph (g) of this AD.

We do not agree with the commenter's request to include additional service information as an additional method of compliance for the inspections required by paragraph (g) of this AD. Boeing Special Attention Service Bulletin 777-78-0071, Revision 2, dated July 23, 2013; and Boeing Service Bulletin 777-78-0082, dated November 9, 2011; do not provide inspection requirements for engine configurations that have incorporated Rolls-Royce Service Bulletin RR.211-71-H824, dated July 30, 2014. Only Boeing Service Bulletin

777-78-0082, Revision 1, dated June 15, 2015, contains detailed inspection requirements and instructions that are applicable to engine configurations that either have or have not incorporated Rolls-Royce Service Bulletin RR.211-71-H824, dated July 30, 2014. As a result, the EEC wire bundle inspections specified by Boeing Service Bulletin 777-78-0082, Revision 1, dated June 15, 2015, are applicable to the ANZ, AAL, and DAL fleet configurations that are identified in Boeing Special Attention Service Bulletin 777-78-0071, Revision 2, dated July 23, 2013.

Consistent with the requirements of paragraph (k) of AD 2016-11-16, we determined that a general visual inspection as specified in Boeing Special Attention Service Bulletin 777-78-0071, Revision 2, dated July 23, 2013; and Boeing Service Bulletin 777-78-0082, dated November 9, 2011; accomplished prior to the effective date of this AD is acceptable when looking for damage of the EEC wire bundle and clips. On or after the effective date of this AD, a detailed inspection is required as specified in Boeing Service Bulletin 777-78-0082, Revision 1, dated June 15, 2015. We have not changed the AD in this regard.

**Request To Clarify Paragraph (c) Applicability of the Proposed AD**

DAL found the "and/or" construction of paragraphs (c)(1) and (c)(2) of the proposed AD confusing, and requested clarification regarding the applicability of airplanes that meet one of the two conditions or both conditions specified in paragraphs (c)(1) and (c)(2) of the proposed AD.

We agree with DAL's request to clarify the applicability of this AD. We have revised paragraph (c) of this AD to include airplanes that have incorporated Boeing Alert Service Bulletin 777-78A0094, dated July 29, 2014, and the condition specified in paragraph (c)(1) or (c)(2) of this AD is met on any engine, or both conditions specified in (c)(1) and (c)(2) of this AD are met on any engine.

**Request To Clarify the Intent of the Proposed AD**

DAL requested that we clarify that the intent of the proposed AD is to maintain the EEC wire bundles inspections described in paragraph (k) of AD 2016-11-16 until all three of the following terminating actions have been completed: (1) Incorporating Boeing Alert Service Bulletin 777-78A0094, dated July 29, 2014; (2) incorporating Work Package 7 of Boeing Special Attention Service Bulletin 777-78-0071, Revision 2, dated July 23, 2013; or

Part 8 or Part 9 of Boeing Service Bulletin 777-78-0082, Revision 1, dated June 15, 2015; as applicable; and (3) incorporating Rolls-Royce Service Bulletin RR.211-71-H824, dated July 30, 2014.

We agree to clarify that the intent of this AD is to maintain the EEC wire bundles repetitive inspections described in paragraph (k) of AD 2016-11-16 for certain airplanes. The repetitive inspections required by paragraph (g) of this AD are no longer required after re-contoured insulation blankets part numbers (P/N) 315W5115-60, -62, and -64 are installed on the right T/R half by accomplishing either Boeing Special Attention Service Bulletin 777-78-0071, Revision 2, dated July 23, 2013; or Boeing Service Bulletin 777-78-0082, Revision 1, dated June 15, 2015; and the EEC wire bundle and clip are re-routed on the engine by accomplishing Rolls-Royce Service Bulletin RR.211-71-H824, dated July 30, 2014. No change to this AD is needed in this regard.

#### **Request To Revise Paragraph (c) Applicability of the Proposed AD**

AAL requested that paragraph (c) of the proposed AD be revised to exclude airplanes with the following configuration combinations from the applicability of paragraph (g) of the proposed AD:

- Engines with or without incorporation of Rolls-Royce Service Bulletin RR.211-71-H824, dated July 30, 2014; T/R halves that incorporated Boeing Alert Service Bulletin 777-78A0094, dated July 29, 2014; installed re-contoured insulation blankets (P/N 315W5115-60, -62, and -64 for the right half and P/N 315W5115-63, -59, and -61 for the left half) by incorporating Work Package 7 of Boeing Special Attention Service Bulletin 777-78-0071, Revision 2, dated July 23, 2013; and accomplishment of EEC wire bundle and clip inspection using Work Package 6 of Boeing Special Attention Service Bulletin 777-78-0071, Revision 2, dated July 23, 2013, when that T/R was installed.
- Engines with incorporation of Rolls-Royce Service Bulletin RR.211-71-H824, dated July 30, 2014, regardless of T/R half insulation blanket standards (re-contoured or non-re-contoured insulation blankets).

AAL provided the following justifications for their request. We have included our response to those justifications.

AAL explained that insulation blanket P/N 315W5115-60, -62, and -64 are optional re-contoured insulation blankets introduced by Boeing Special Attention Service Bulletin 777-78-

0071, Revision 2, dated July 23, 2013, to replace original P/N 315W5115-2, -6, or -20 non-re-contoured insulation blankets that caused the initial potential EEC wire bundle and clip fretting condition. AAL noted that the optional re-contoured insulation blankets were designed with the addition of rulon fretting protection on the insulation blanket face sheet to prevent potential EEC wire bundle and clip fretting at the inspection area of paragraph (g) of the proposed AD. AAL stated that the installation of the re-contoured insulation blankets therefore provides an equivalent level of safety to the repetitive EEC wire bundle and clip inspections.

AAL reasoned that Rolls-Royce Service Bulletin RR.211-71-H824, dated July 30, 2014, changes the EEC wire bundle routing to provide additional clearance with the T/R non-re-contoured insulation blankets to eliminate the potential fretting in the area of inspection as specified in paragraph (g) of the proposed AD and provides an equivalent level of safety to the repetitive EEC wire bundle and clip inspections. AAL added that any existing harness damage will be or has been addressed during incorporation of this service bulletin during an engine shop visit.

We agree to clarify. We have determined that after accomplishing the work instructions in Boeing Alert Service Bulletin 777-78A0094, dated July 29, 2014, there is still not sufficient clearance between the insulation blankets and EEC wire bundle W0800 and its associated clip. The EEC wire bundle and clip could still be damaged from making contact with insulation blankets when one or both of the following conditions exist:

- The EEC wire and clip are not re-routed on the engine (did not incorporate Rolls-Royce Service Bulletin RR.211-71-H824, dated July 30, 2014); or
- Non-re-contoured insulation blankets (P/N 315W5115-2, -6, and -20) are installed on the right T/R half.

We have determined that in order to have proper clearance between the insulation blankets and the EEC wiring, and to prevent damage, Rolls-Royce Service Bulletin RR.211-71-H824, dated July 30, 2014, must be incorporated to re-route the EEC wire bundle and clip on the engine; and re-contoured insulation blankets P/N 315W5115-60, -62, and -64 must be installed on the right T/R half by accomplishing either Boeing Special Attention Service Bulletin 777-78-0071, Revision 2, dated July 23, 2013; or

Boeing Service Bulletin 777-78-0082, Revision 1, dated June 15, 2015.

AAL pointed out that the insulation blankets have repetitive airworthiness limitation inspection requirements as specified by Boeing Maintenance Planning Document (MPD) D622W001-9, Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), Airworthiness Limitation Item (ALI) 78-AWL-01 that maintain the blanket rulon material condition. AAL noted that T/Rs that incorporate Work Package 7 of Boeing Special Attention Service Bulletin 777-78-0071, Revision 2, dated July 23, 2013, for installing re-contoured insulation blankets no longer have a T/R configuration specified by Boeing Special Attention Service Bulletin 777-78-0071, dated November 25, 2009; or Boeing Special Attention Service Bulletin 777-78-0071, Revision 1, dated September 8, 2010; and are not applicable to the EEC wire bundle and clip inspection as specified in Work Package 6 of Boeing Special Attention Service Bulletin 777-78-0071, Revision 2, dated July 23, 2013.

AAL also noted that Rolls-Royce Model RB211-Trent 800 engine EEC wire runs already receive repetitive zonal general visual inspections as specified by Boeing MPD D622W001, Section 3, Zonal Inspection Program, item 71-864-01 and item 71-878-02, and receive repetitive detailed inspections as specified by Boeing MPD D622W001, Section 1, System Maintenance Program, item 20-540-01 and item 20-540-02, as part of a Lightning/High Intensity Radiated Fields maintenance program. AAL stated that these inspections are regulated by the 14 CFR 121.1111 required electrical wiring interconnection systems (EWIS) maintenance program requirements.

In regards to AAL's reference to Boeing MPD D622W001-9, Section 9, AWLs and CMRs, ALI 78-AWL-01, we note that Boeing MPD D622W001-9, Section 9, AWLs and CMRs, ALI 78-AWL-01 has requirements to inspect the insulation blankets for damage, but it does not directly inspect the EEC wire bundle and clip for damage. The intent of this AD is to specifically inspect the EEC wire bundle and clip for damage. We agree with AAL's justification that T/Rs with re-contoured insulation blankets installed no longer have a T/R configuration as specified by Boeing Special Attention Service Bulletin 777-78-0071, November 25, 2009; or Boeing Special Attention Service Bulletin 777-78-0071, Revision 1, dated September 8, 2010. Boeing Special Attention Service Bulletin 777-78-0071, Revision 2, dated

July 23, 2013, does not have clear information and instructions to do a detailed EEC inspection for T/R halves with re-contoured blankets. However, as explained by Boeing and Boeing Service Bulletin 777-78-0082, Revision 1, dated June 15, 2015, instructions, and reinforced by the requirements in this AD, EEC wire bundles and clips are to be inspected when one or both of the previously described conditions exists where the EEC wire bundle and clip could still be damaged from making contact with insulation blankets. We note that this AD mandates the use of Boeing Service Bulletin 777-78-0082, Revision 1, dated June 15, 2015, to do the EEC wire bundle and clip detailed inspections, which is applicable to airplanes in a configuration specified in Boeing Special Attention Service Bulletin 777-78-0071, Revision 2, dated July 23, 2013.

We infer that AAL is suggesting that the existing inspections in Boeing MPD D622W001, Section 3, Zonal Inspection Program, item 71-864-01 and item 71-878-02, and detailed inspections in Boeing MPD D622W001, Section 1, System Maintenance Program, item 20-540-01 and item 20-540-02 provide an equivalent level of safety to the repetitive wire bundle and clip inspections. We disagree with that suggestion. We note that part of the EWIS maintenance program requirement for operators is to maintain continued airworthiness of the electrical wiring interconnection systems on the airplane, including the engine. The EWIS maintenance program requirement is based on the assumption that the type design is compliant and is not expected to create wiring problems if the original configuration is maintained. This AD was proposed because the existing design was found to have details that are expected to lead to a wiring chafing problem on at least some airplanes. Therefore, we determined that more frequent and detailed inspections are necessary to address this unsafe condition. The inspections in Boeing MPD D622W001, Section 3, Zonal Inspection Program, item 71-864-01 and item 71-878-02; and Boeing MPD D622W001, Section 1, System Maintenance Program, item 20-540-01 and item 20-540-02; are not sufficient to address the identified unsafe condition of this AD. The repetitive inspection intervals for Boeing MPD D622W001, Section 1, System Maintenance Program, item 20-540-01 and item 20-540-02; and Boeing MPD D622W001, Section 3, Zonal Inspection Program, item 71-864-01 and item 71-878-02; are longer than the

2,000 flight-hour repetitive inspection interval specified in paragraph (g) of this AD, and they can be escalated to a longer interval without FAA ACO Branch approval. In accordance with 14 CFR part 39 (§ 39.5 and § 39.13), this AD is issued to address the unsafe condition identified in paragraph (e) of this AD.

Therefore, we do not agree to revise paragraph (c) of this AD as proposed by the commenter. We did not change the AD in this regard.

#### **Request To Include Terminating Action**

DAL requested that we include terminating action for airplanes that accomplish the modification in paragraphs (c)(1) and (c)(2) of the proposed AD. DAL explained that paragraph (c) of the proposed AD states that if airplanes with Rolls-Royce engines, which have accomplished the action in Boeing Alert Service Bulletin 777-78A0094, dated July 29, 2014, have neither the condition in paragraph (c)(1) of the proposed AD nor the condition in paragraph (c)(2) of the proposed AD, that the rule is not applicable. DAL noted that there is no terminating action paragraph in the proposed AD.

We agree to clarify the requirements of this AD. As discussed in the above comments: For any affected airplane on which the modification specified in paragraph (c)(2) of this AD, and the replacement of all affected parts (non-re-contoured insulation blankets) identified in paragraph (c)(1) of this AD with non-affected parts (re-contoured insulation blankets) have been accomplished on both engines, that airplane is no longer affected by this AD. For clarity, we have added paragraph (i) to this AD to specify terminating actions for the repetitive inspections required by paragraph (g) of this AD and redesignated subsequent paragraphs accordingly.

#### **Request To Extend the Compliance Time**

AAL requested that for engines that have not incorporated Rolls-Royce Service Bulletin RR.211-71-H824, dated July 30, 2014, the inspection required by paragraph (g) of this AD be required within 2,000 flight hours, rather than 500 flight hours, after the effective date of the AD, if re-contoured insulation blankets (P/N 315W5115-60, -62, -64) were installed on the T/R by Work Package 7 of Boeing Special Attention Service Bulletin 777-78-0071, Revision 2, dated July 23, 2013, and, during installation of the insulation blanket on the T/R halves, the EEC wire bundle inspection was accomplished on the engine in accordance with Work Package 6 of Boeing Special Attention

Service Bulletin 777-78-0071, Revision 2, dated July 23, 2013.

We do not agree with the commenter's request because we have determined that both the EEC wiring modification specified in Rolls-Royce Service Bulletin RR.211-71-H824, dated July 30, 2014, and installation of the re-contoured insulation blankets specified in Work Package 7 of Boeing Special Attention Service Bulletin 777-78-0071, Revision 2, dated July 23, 2013, are necessary to prevent the chafing condition that is the subject of this AD. In the absence of both of those modifications, we have determined that a 2,000 flight hour inspection interval is necessary. The 500 flight hours is meant to be a grace period for those airplanes on which the interval has lapsed (due to inspections being terminated in AD 2016-11-16), as well as airplanes that are nearing the end of the inspection interval. AAL did not provide adequate justification for a longer grace period. We did not change this AD in this regard.

#### **Request To Clarify the Requirements of Paragraph (g) of the Proposed AD for a Certain Repaired Wire Condition**

For engines which require inspections as specified in paragraph (g) of this AD, AAL requested clarification that the inspection of the wire bundle can be accomplished without removal of any harness polytetrafluoroethylene (PTFE) tape protection applied to the wire bundle, provided that the PTFE tape protection is not damaged, and provided the wire bundle had received an inspection and was repaired if damaged prior to application of the protective tape wrap. AAL explained that it had already identified the potential wire bundle interference condition through its continuous airworthiness maintenance program (CAMP) prior to release of Boeing Special Attention Service Bulletin 777-78-0071, Revision 2, dated July 23, 2013. As a result, AAL accomplished a fleet-wide general visual inspection of the EEC wire bundle W0800 for damage in the inspection area, accomplished any required repairs, and then wrapped the W0800 harness with PTFE tape in accordance with the approved procedures in its CAMP.

We do not agree with the commenter's request because we do not have sufficient information in the AAL request to clarify nor expand paragraph (g) of this AD for wire bundles that have been modified by AAL's CAMP. We do not consider it appropriate to include various provisions in an AD applicable only to individual airplane configurations or to a single operator's

unique use of an affected airplane. However, AAL and others may request an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (j) of this AD, provided sufficient data are submitted to substantiate that the AMOC would provide an acceptable level of safety. We did not change this AD in this regard.

#### **Request To Clarify Requirements of Paragraph (g) of the Proposed AD for Engine Inspection in the Shop**

AAL requested clarification to paragraph (g) of the proposed AD to confirm that after the effective date of this AD, installation of an engine that had a shop visit meets the requirements of an inspection, and in that case, that the next inspection is required within 2,000 hours of engine installation.

We agree to clarify paragraph (g) of this AD. If, during a shop visit, an EEC wire bundle and clamp inspection was done as specified in Boeing Special Attention Service Bulletin 777-78-0071, Revision 2, dated July 23, 2013; or Boeing Service Bulletin 777-78-0082, dated November 9, 2011; or Boeing Service Bulletin 777-78-0082, Revision 1, dated June 15, 2015; then the next inspection can be done within 2,000 flight hours from the last inspection done in the shop. However, if an inspection other than the one specified in Boeing Special Attention Service Bulletin 777-78-0071, Revision 2, dated July 23, 2013; or Boeing Service Bulletin 777-78-0082, dated November 9, 2011; or Boeing Service Bulletin 777-78-0082, Revision 1, dated June 15, 2015; was done, operators must request an AMOC in accordance with the procedures specified in paragraph (j) of this AD. No change to this AD is needed.

#### **Request To Modify Relationship to Affected ADs**

DAL requested that AD 2005-07-24, Amendment 39-14049 (70 FR 18285, April 11, 2005) ("AD 2005-07-24") and AD 2016-11-16 be added to paragraph (b) of the proposed AD. DAL also requested that the proposed AD be incorporated as a revision to AD 2016-11-16 or a supersedure to AD 2016-11-16 in order to provide a clear relationship between the actions required. DAL observed that paragraph (b) of the proposed AD states that no ADs are affected by this rule, but paragraph (l) of AD 2016-11-16 states that accomplishment of Boeing Alert Service Bulletin 777-78A0094, dated July 29, 2014, will terminate paragraph (k) of AD 2016-11-16. DAL also submitted that paragraph (k) of AD

2016-11-16 pertains to the EEC wire bundle inspections that are described in the "Discussion" section of the proposed rule. DAL stated that paragraph (q) of AD 2016-11-16 describes accomplishments that are terminating actions to AD 2005-07-24, which include the EEC wire bundle inspections as described in paragraph (k) of AD 2016-11-16. DAL contended that the proposed rule reinstates these inspections and therefore affects the requirements of AD 2005-07-24 as described in paragraph (q) of AD 2016-11-16.

We do not agree with the commenter's request because this AD is a stand-alone AD and does not impact nor change the requirements of AD 2005-07-24 or AD 2016-11-16. The T/R inner wall and TPS configuration, and certain engine configurations affected by the actions in this AD are not configurations affected by AD 2005-07-24 or AD 2016-11-16. This AD is only applicable to airplanes with certain T/R halves on which the actions in Boeing Alert Service Bulletin 777-78A0094, dated July 29, 2014, have been accomplished, and the condition specified in paragraph (c)(1) or (c)(2) of this AD is met on any engine, or both conditions specified in (c)(1) and (c)(2) of this AD are met on any engine. This AD is not applicable to airplanes with T/R halves of certain inner wall and TPS configurations specified in AD 2005-07-24 and AD 2016-11-16 on which the actions specified in Boeing Alert Service Bulletin 777-78A0094, dated July 29, 2014, have not been accomplished. Therefore, this AD has no direct relationship to and does not change the requirements of AD 2005-07-24 or AD 2016-11-16.

After accomplishing paragraph (l) of AD 2016-11-16 to install serviceable thrust reverser halves (by accomplishing Boeing Alert Service Bulletin 777-78A0094, dated July 29, 2014), and paragraph (n) of AD 2016-11-16 to revise the maintenance or inspection program, the repetitive inspection requirements of AD 2016-11-16 are terminated. However, Boeing and the FAA have determined that inadequate clearance between the TPS non-re-contoured insulation blankets and the EEC wiring still exists after completing the actions required by AD 2016-11-16, which will result in damaged wires, and an unsafe condition still exists.

We have determined not to revise or supersede AD 2016-11-16 because of the high rate of inner wall failures and the urgency of the safety issue. We have also determined that the required actions must be accomplished to ensure continued safety. Revising this AD as requested would necessitate (under the

provisions of the Administrative Procedure Act) reissuing the notice, reopening the period for public comment, considering additional comments subsequently received, and eventually issuing a final rule. In light of this, and in consideration of the unsafe condition, we have determined that further delay of this AD is not appropriate. We have not changed this AD in this regard.

#### **Conclusion**

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

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

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

#### **Related Service Information Under 1 CFR Part 51**

We reviewed Boeing Service Bulletin 777-78-0082, Revision 1, dated June 15, 2015. The service information describes, among other things, procedures for repetitive inspections of the EEC wire bundles and clips, and corrective actions if necessary.

We also reviewed Boeing Special Attention Service Bulletin 777-78-0071, Revision 2, dated July 23, 2013. This service information describes, among other things, procedures for installing re-contoured insulation blankets on the right T/R halves and performing an EEC wire bundle and clip inspection.

We also reviewed Rolls-Royce Service Bulletin RR.211-71-H824, dated July 30, 2014. This service information describes procedures for modifying the engine by rerouting the EEC wire bundle and clip.

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

#### **Costs of Compliance**

We estimate that this AD affects 55 airplanes of U.S. registry. We estimate the following costs to comply with this AD:

## ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection .....	Up to 6 work-hours × \$85 per hour = \$510 per inspection cycle.	\$0	Up to \$510 per inspection cycle ....	Up to \$28,050 per inspection cycle.

We have received no definitive data that would enable us to provide cost estimates for the repairs specified in this AD. We estimate the following costs to

do any necessary replacements that would be required based on the results of the inspection. We have no way of determining the number of aircraft that

might need these repairs or replacements:

## ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement of EEC wire harness .....	1 work-hour × \$85 per hour = \$85 .....	\$8,500	\$8,585

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

**Authority for This Rulemaking**

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

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

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

**Regulatory Findings**

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

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

- (1) Is not a "significant regulatory action" under Executive Order 12866,
- (2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),
- (3) Will not affect intrastate aviation in Alaska, and
- (4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

**PART 39—AIRWORTHINESS DIRECTIVES**

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

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

**§ 39.13 [Amended]**

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

**2018–25–11 The Boeing Company:**

Amendment 39–19522; Docket No. FAA–2017–0246; Product Identifier 2017–NM–011–AD.

**(a) Effective Date**

This AD is effective January 18, 2019.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to The Boeing Company Model 777–200 and –300 series airplanes, certificated in any category, equipped with Rolls-Royce Model RB211-Trent 800 engines, on which the actions specified in Boeing Alert Service Bulletin 777–78A0094 have been incorporated, and the condition specified in paragraph (c)(1) or (c)(2) of this AD is met on any engine, or both conditions specified in (c)(1) and (c)(2) of this AD are met on any engine.

(1) Thermal protection system (TPS) non-re-contoured insulation blankets having part numbers (P/N) 315W5115–2, –6, or –20 are installed on the thrust reverser (T/R) inner wall.

(2) Rolls-Royce Service Bulletin RR.211–71–H824, dated July 30, 2014, has not been incorporated on the engine.

**(d) Subject**

Air Transport Association (ATA) of America Code 78, Engine exhaust.

**(e) Unsafe Condition**

This AD was prompted by reports of inadequate clearance between the TPS insulation blankets and the electronic engine control (EEC) wiring, which resulted in damaged wires. We are issuing this AD to address damaged wires, which could result in in-flight shutdown of the engine, or the inability to properly control thrust, and consequent reduced controllability of the airplane.

**(f) Compliance**

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



**(g) Repetitive EEC Wire Bundle Inspection**

Within 2,000 flight hours since the most recent EEC wire bundle inspection done as specified in Boeing Special Attention Service Bulletin 777-78-0071; or Boeing Service Bulletin 777-78-0082; or within 500 flight hours after the effective date of this AD, whichever occurs later: Do a detailed inspection for damage of the EEC wire bundles and clips, and do all applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 777-78-0082, Revision 1, dated June 15, 2015. Do all applicable corrective actions before further flight. Repeat the inspection thereafter at intervals not to exceed 2,000 flight hours.

**(h) Credit for Previous Actions**

This paragraph provides credit for the actions specified in paragraph (g) of this AD, if those actions were performed before the effective date of this AD using the service information specified in paragraph (h)(1) or (h)(2) of this AD.

(1) Boeing Special Attention Service Bulletin 777-78-0071, Revision 2, dated July 23, 2013.

(2) Boeing Service Bulletin 777-78-0082, dated November 9, 2011.

**(i) Optional Terminating Action**

Accomplishing the actions in paragraph (i)(1) and (i)(2) of this AD terminates the repetitive inspections required by paragraph (g) of this AD for the modified engine installation only.

(1) Installing re-contoured insulation blankets P/N 315W5115-60, -62, and -64 on the right T/R halves in accordance with the Accomplishment Instructions of either Boeing Special Attention Service Bulletin 777-78-0071, Revision 2, dated July 23, 2013; or Boeing Service Bulletin 777-78-0082, Revision 1, dated June 15, 2015.

(2) Modifying an engine in accordance with the Accomplishment Instructions of Rolls-Royce Service Bulletin RR.211-71-H824, dated July 30, 2014.

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

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

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO

Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

**(k) Related Information**

(1) For more information about this AD, contact Kevin Nguyen, Aerospace Engineer, Propulsion Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206-231-3555; email: [kevin.nguyen@faa.gov](mailto:kevin.nguyen@faa.gov).

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

**(l) Material Incorporated by Reference**

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

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

(i) Boeing Service Bulletin 777-78-0082, Revision 1, dated June 15, 2015.

(ii) Boeing Special Attention Service Bulletin 777-78-0071, Revision 2, dated July 23, 2013.

(iii) Rolls-Royce Service Bulletin RR.211-71-H824, dated July 30, 2014.

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

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

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

Issued in Des Moines, Washington, on November 29, 2018.

**James Cashdollar,**

*Acting Director, System Oversight Division, Aircraft Certification Service.*

[FR Doc. 2018-26532 Filed 12-13-18; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 71**

[Docket No. FAA-2017-1187; Airspace Docket No. 17-AGL-25]

**RIN 2120-AA66**

**Amendment of Class D and Class E Airspace and Revocation of Class E Airspace; Jackson, MI**

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

**ACTION:** Final rule.

**SUMMARY:** This action modifies Class D airspace, Class E airspace designated as a surface area, and Class E airspace extending upward from 700 feet above the surface, and removes Class E airspace designated as an extension to Class D or Class E surface area at Jackson County Airport-Reynolds Field, Jackson MI. This action is due to the decommissioning of the Jackson VHF omnidirectional range (VOR), which provided navigation guidance for the instrument procedures to this airport. The VOR is being decommissioned as part of the VOR Minimum Operational Network (MON) Program. The name and the geographic coordinates of the airport are also updated to coincide with the FAA's aeronautical database. Additionally, this action makes an editorial change to the airspace legal descriptions replacing "Airport/Facility Directory" with the term "Chart Supplement."

**DATES:** Effective 0901 UTC, February 28, 2019. 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 7400.11C, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at [http://www.faa.gov/air\\_traffic/publications/](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 7400.11C 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, Class E airspace designated as a surface area, and Class E airspace extending upward from 700 feet above the surface, and removes Class E airspace designated as an extension to Class D or Class E surface area at Jackson County Airport-Reynolds Field, Jackson MI to support instrument flight rules (IFR) operations at this airport.

**History**

The FAA published a notice of proposed rulemaking in the **Federal Register** (83 FR 19987; May 7, 2018) for Docket No. FAA-2017-1187 to amend Class D airspace, Class E airspace designated as a surface area, and Class E airspace extending upward from 700 feet above the surface, and remove Class E airspace designated as an extension to Class D or Class E surface area at Jackson County Airport-Reynolds Field, Jackson MI. 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 paragraph 5000, 6002, 6004, and 6005 of FAA Order 7400.11C, dated August 13, 2018, and effective September 15, 2018, 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 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018. FAA Order 7400.11C is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11C lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

**The Rule**

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71:

Modifies the Class D airspace at Jackson County Airport-Reynolds Field, Jackson, MI, by updating the geographic coordinates of the airport to coincide with the FAA's aeronautic database and makes an editorial change to the airspace legal description replacing "Airport/Facility Directory" with the term "Chart Supplement";

Modifies the Class E airspace designated as a surface area at Jackson County Airport-Reynolds Field (formerly Jackson County-Reynolds Field) by removing all airspace extensions from the 4-mile radius in the airspace legal description, updates the name and geographic coordinates 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 the term "Chart Supplement";

Removes the Class E airspace designated as an extension to Class D or Class E airspace designated as a surface area at Jackson County-Reynolds Field, MI, as it is no longer required; and

Modifies the Class E airspace area extending upward from 700 feet above the surface to within a 6.5-mile radius (decreased from a 7-mile radius) of Jackson County Airport-Reynolds Field (formerly Jackson County-Reynolds Field), removes the Jackson VOR/DME from the airspace legal description, and updates the name and geographic coordinates to coincide with the FAA's aeronautical database.

Airspace reconfiguration is necessary due to the decommissioning of the Jackson VOR, which provided navigation guidance for the instrument procedures to this airport, as part of the VOR MON Program and to bring the airspace in compliance with FAA Order 7400.2L, Procedures for Handling Airspace Matters. This action enhances safety and the management of IFR operations at this airport.

**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 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, is amended as follows:

*Paragraph 5000 Class D Airspace*  
\* \* \* \* \*

**AGL MI D Jackson, MI [Amended]**

Jackson County Airport-Reynolds Field, MI  
(Lat. 42°15'38" N, long. 84°27'44" W)

That airspace extending upward from the surface to and including 3,500 feet MSL within a 4-mile radius of Jackson County Airport-Reynolds Field. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

*Paragraph 6002 Class E Airspace Areas Designated as Surface Areas*

\* \* \* \* \*

**AGL MI E2 Jackson, MI [Amended]**

Jackson County Airport-Reynolds Field, MI  
(Lat. 42°15'38" N, long. 84°27'44" W)

That airspace extending upward from the surface to and including 3,500 feet MSL within a 4-mile radius of Jackson County Airport-Reynolds Field. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

*Paragraph 6004 Class E Airspace Designates as an Extension to Class D and Class E Surface Areas*

\* \* \* \* \*

**AGL MI E4 Jackson, MI [Removed]**

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

\* \* \* \* \*

**AGL MI E5 Jackson, MI [Amended]**

Jackson County Airport-Reynolds Field, MI  
(Lat. 42°15'38" N, long. 84°27'44" W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Jackson County Airport-Reynolds Field.

Issued in Fort Worth, Texas, on December 6, 2018.

John A. Witucki,

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

[FR Doc. 2018-26919 Filed 12-13-18; 8:45 am]

**BILLING CODE 4910-13-P**

**ACTION:** Final rule.

**SUMMARY:** This action modifies Class D airspace, Class E airspace extending upward from 700 feet above the surface, and removes Class E airspace designated as an extension at Vandenberg Air Force Base (AFB), Lompoc, CA. This action also modifies Class E airspace extending upward from 700 feet above the surface at Lompoc Airport, Lompoc, CA, by enlarging the airspace and removing the part-time Notice to Airmen (NOTAM) status. This action amends the geographic coordinates of the airport to match the FAA's aeronautical database. These actions are necessary for the safety and management of instrument flight rules (IFR) operations at these airports. An editorial change removes the city associated with the airport name in the airspace designations and exclusionary language from the description. Additionally, this action replaces the outdated term "Airport/Facility Directory" with the term "Chart Supplement".

**DATES:** Effective 0901 UTC, April 25, 2019. 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 7400.11C, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at [http://www.faa.gov/air\\_traffic/publications/](http://www.faa.gov/air_traffic/publications/). For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267-8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030, or go to <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

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

**FOR FURTHER INFORMATION CONTACT:**

Bonnie Malgarini, Federal Aviation Administration, Operations Support Group, Western Service Center, 2200 S. 216th Street, Des Moines, WA 98198; telephone (206) 231-2329.

**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 modifies Class D, Class E airspace, and removes Class E airspace designated as an extension at Lompoc, CA, to support of IFR operations at Vandenberg AFB and Lompoc Airport.

**History**

The FAA published a notice of proposed rulemaking (NPRM) in the **Federal Register** (83 FR 7435; February 21, 2018) for Docket No. FAA-2017-1146 to modify Class D airspace, Class E airspace extending upward from 700 feet above the surface, and remove Class E airspace designated as an extension at Vandenberg Air Force Base (AFB), Lompoc, CA. 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 airspace designations are published in paragraph 5000, and Class E airspace designations are published in paragraphs 6004 and 6005 of FAA Order 7400.11C, dated August 13, 2018, and effective September 15, 2018, which is incorporated by reference in 14 CFR 71.1.

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

This document amends FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018. FAA Order 7400.11C is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11C 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 enlarges Class D airspace, reduces Class E airspace extending upward from 700 feet above the surface, and removes Class E airspace designated as an extension at Vandenberg Air Force Base (AFB), Lompoc, CA, and also amends Class E airspace extending upward from 700 feet above the surface and remove

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 71**

[Docket No. FAA-2017-1146; Airspace  
Docket No. 17-AWP-16]

**RIN 2120-AA66**

**Amendment of Class D and Class E Airspace, and Removal of Class E Airspace; Lompoc, CA**

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

part-time NOTAM status at Lompoc Airport, Lompoc, CA.

Class D airspace is enlarged to within a 5-mile radius (from a 4.3-mile radius) of Vandenberg AFB. Additionally, an editorial change removes the city associated with the airport name in the airspace designation to comply with a recent change to FAA Order 7400.2L, dated October 12, 2017. An editorial change was also made to the Class D airspace legal description replacing "Airport/Facility Directory" with "Chart Supplement".

Class E airspace designated as an extension is removed, as this airspace is not required to protect IFR arrival and departure aircraft at Vandenberg AFB.

Class E airspace extending upward from 700 feet above the surface at Vandenberg AFB has been modified to a 7.3-mile radius of the airport with extensions to 11 miles north, 12.5-miles southeast, and 11 miles south of the airport (from a 7.8-mile radius of the airport and within 1.8 miles each side of the Vandenberg AFB ILS localizer southeast course, extending from 7.8 miles to 10.3 miles southeast of the airport). The exclusionary language contained in the legal description has been removed to comply with FAA Order 7400.2L, Procedures for Handling Airspace Matters.

This action also amends Class E airspace extending upward from 700 feet above the surface at Lompoc Airport, Lompoc, CA, by enlarging the airspace to within a 6.4-mile radius of the airport, and within 4 miles each side of the 090° bearing from the airport extending from the 6.4-mile radius to 12.8 miles east of the airport, and within 4 miles each side of the 113° bearing from the airport extending from the 6.4-mile radius to 20.4 miles southeast of the airport (from a 4.3-mile radius of the airport and within 4.3 miles each side of the Gaviota VORTAC 293° radial extending from the 4.3-mile radius to 10.9 miles west of the Gaviota VORTAC and within 4 miles each side of the 083° bearing from the Lompoc NDB to 8 miles east of the NDB). Also, the part-time NOTAM status has been removed, since this airspace is effective continuously.

Finally, this action updates the geographic coordinates of these airports to match the FAA's aeronautical database.

#### 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, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

#### Environmental Review

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

#### Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

#### Adoption of the Amendment

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

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

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

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

##### § 71.1 [Amended]

- 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, is amended as follows:

*Paragraph 5000 Class D Airspace.*

\* \* \* \* \*

##### AWP CA D Lompoc, CA [Amended]

Vandenberg AFB, CA

(Lat. 34°44'14" N, long. 120°35'04" W)

That airspace extending upward from the surface to and including 2,900 feet MSL within a 5-mile radius of Vandenberg AFB. This Class D airspace area is effective during

the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

*Paragraph 6004 Class E Airspace Designated as an Extension to a Class D or Class E Surface Area.*

\* \* \* \* \*

##### AWP CA E4 Lompoc, CA [Removed]

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

\* \* \* \* \*

##### AWP CA E5 Lompoc, CA [Amended]

Vandenberg AFB, CA

(Lat. 34°44'14" N, long. 120°35'04" W)

That airspace extending upward from 700 feet above the surface within a 7.3-mile radius of Vandenberg AFB from the airport 007° bearing clockwise to the airport 143° bearing, and within a 12.5-mile radius of the airport from the airport 143° bearing clockwise to the airport 168° bearing, and within an 11-mile radius of the airport from the airport 168° bearing clockwise to the airport 190° bearing, and within a 7.3-mile radius of the airport from the airport 190° bearing clockwise to the airport 343° bearing, and within an 11-mile radius of the airport from the airport 343° bearing clockwise to the airport 007° bearing.

##### AWP CA E5 Lompoc, CA [Amended]

Lompoc Airport, CA

(Lat. 34°39'56" N, long. 120°28'03" W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Lompoc Airport, and within 4 miles each side of the 090° bearing from the airport extending to 12.8 miles east of the airport, and within 4 miles each side of the 113° bearing from the airport extending to 20.4 miles southeast of the airport.

Issued in Seattle, Washington, on November 30, 2018.

**Shawn M. Kozica,**

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

[FR Doc. 2018–26799 Filed 12–13–18; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

**Docket No. FAA–2018–0082; Airspace Docket No. 16–AWP–22]**

**RIN 2120–AA66**

#### Amendment of Class E Airspace; Pago Pago, American Samoa

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

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

**SUMMARY:** This action amends the legal description of the Pago Pago International Airport at Pago Pago, American Samoa. The latitudinal geographic coordinate of the airport is corrected to coincide with the FAA's aeronautical database. This does not affect the charted boundaries or operating requirements of the airspace.

**DATES:** Effective 0901 UTC, February 28, 2019. 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 7400.11C, Airspace Designations and Reporting Points, and subsequent amendments can be viewed on line at [http://www.faa.gov/air\\_traffic/publications/](http://www.faa.gov/air_traffic/publications/). For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC, 20591; telephone: 202-267-8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to [https://www.archives.gov/federal\\_register/cfr/ibr\\_locations.html](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:** Bonnie Malgarini, Federal Aviation Administration, Operations Support Group, Western Service Center, 2200 S 216th Street, Des Moines, WA, 98198; telephone (206) 231-2329.

#### **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 the coordinates of the Pago Pago International Airport, at Pago Pago, American Samoa.

#### **History**

The Aeronautical Information Services branch identified an error in a latitudinal coordinate in the legal description of the Pago Pago International Airport that was not coincidental with the FAA's aeronautical database. This action makes these corrections.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11C, dated August 13, 2018, and effective September 15, 2018, which is incorporated by reference in 14 CFR part 71.1. The corrected airport reference points will be published subsequently in the Order.

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

This document amends FAA Order 7400.11C dated August 13, 2018, and effective September 15, 2018, which is incorporated by reference in 14 CFR 71.1. FAA Order 7400.11C is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11C lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

#### **The Rule**

The FAA is amending Title 14, Code of Federal Regulations (14 CFR) part 71 by correcting the legal description of the Pago Pago International Airport, Pago Pago, American Samoa. The geographic coordinates of the airport are updated to coincide with the FAA's aeronautical database. This does not affect the boundaries or operating requirements of the airspace.

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

#### **Regulatory Notices and Analyses**

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, 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 5-6.5a. 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(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 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, effective September 15, 2018, is amended as follows:

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

\* \* \* \* \*

##### **AWP AS E5 Pago Pago, AS [Modified]**

Pago Pago International Airport, American Samoa

(Lat. 14°19'54" S, long. 170°42'41" W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Pago Pago International Airport and within 4 miles either side of the 071° bearing of the Pago Pago International Airport, extending from the 7-mile radius to 10.6 miles northeast of the Pago Pago International Airport, and within 4 miles either side of the 240° bearing of the Pago Pago International Airport, and extending from 7-miles radius to 10.4 miles southwest of the Pago Pago International Airport; and that airspace extending upward from 1200 feet above the surface within 20-mile radius of Pago Pago International

Airport, excluding that airspace extending beyond 12 miles of the shoreline.

Issued in Seattle, Washington, on November 30, 2018.

**Shawn M. Kozica,**

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

[FR Doc. 2018-26809 Filed 12-13-18; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Docket No. FAA-2018-0016; Airspace Docket No. 17-ANM-14]

**RIN 2120-AA66**

#### Amendment of Class D and Class E Airspace; Aspen, CO

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

**ACTION:** Final rule.

**SUMMARY:** This action modifies Class E airspace designated as an extension at Aspen-Pitkin County Airport/Sardy Field, Aspen, CO, and removes the part-time NOTAM language from the legal description. This action also amends Class E airspace extending upward from 700 feet above the surface and removes the Class E 1,200 foot airspace. Also, this action updates the airport's geographic coordinates, and replaces the term Airport/Facility Directory with Chart Supplement in the Class D airspace and Class E surface airspace legal descriptions. These changes are necessary to accommodate airspace redesign for the safety and management of instrument flight rules (IFR) operations at the airport.

**DATES:** Effective 0901 UTC, February 28, 2019. 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 7400.11C, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at [http://www.faa.gov/air\\_traffic/publications/](http://www.faa.gov/air_traffic/publications/). For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267-8783. The Order is also available for inspection at the National Archives and Records Administration (NARA).

For information on the availability of this material at NARA, call (202) 741-6030, or go to <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

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

**FOR FURTHER INFORMATION CONTACT:** Bonnie Malgarini, Federal Aviation Administration, Operations Support Group, Western Service Center, 2200 S 216th Street, Des Moines, WA 98198-6547; telephone (206) 231-2329.

#### 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 modifies Class D and E airspace at Aspen-Pitkin County Airport/Sardy Field, Aspen, CO, to support IFR operations at the airport.

##### History

The FAA published a notice of proposed rulemaking in the **Federal Register** (83 FR 21968; May 11, 2018) for Docket No. FAA-2018-0016 to modify Class E airspace designated as an extension and Class E airspace extending upward from 700 feet above the surface at Aspen-Pitkin County Airport/Sardy Field, Aspen, CO. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11C, dated August 13, 2018, and effective September 15, 2018, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

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

This document amends FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018.

FAA Order 7400.11C is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11C lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

##### The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 modifies Class E airspace designated as an extension and Class E airspace extending upward from 700 feet above the surface at Aspen-Pitkin County Airport/Sardy Field, Aspen, CO.

Class E airspace designated as an extension is modified to within 3.5 miles west and 2.7 miles east (from 2.7 miles each side) of the 340° bearing (previously 315°) from Aspen-Pitkin County Airport/Sardy Field Airport, extending from the 4.3-mile radius to 7.8 miles north (from 7.4 miles northwest) of the airport. Also, the part-time NOTAM language is removed from the legal description since the airspace is in effect continuously.

Class E airspace extending upward from 700 feet above the surface is reduced to within 6.6 miles west and 3.2 miles east of the 354° bearing from Aspen-Pitkin County Airport/Sardy Field Airport extending to 11.1 miles north of the airport (from a much larger rectangular area defined as beginning at lat. 39°04'00" N, long. 106°40'02" W; to lat. 39°04'00" N, long. 107°44'02" W; to lat. 39°39'00" N, long. 107°44'02" W; to lat. 39°39'00" N, long. 106°40'02" W, to the point of beginning). Also, Class E airspace extending upward from 1,200 feet is removed as this airspace is contained in the Denver Class E en route airspace area.

The geographic coordinates of the airport also are updated for the Class D and E airspace areas. An editorial change also is made to the Class D and Class E surface area airspace legal descriptions replacing Airport/Facility Directory with Chart Supplement.

These changes are necessary to accommodate airspace redesign for the safety and management of IFR operations under standard instrument approach procedures at the airport.

##### 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, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

#### Environmental Review

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

#### Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

#### Adoption of the Amendment

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

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

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

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

##### § 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, is amended as follows:

*Paragraph 5000 Class D Airspace.*

\* \* \* \* \*

##### ANM CO D Aspen, CO [Amended]

Aspen-Pitkin County Airport/Sardy Field, CO  
(Lat. 39°13'19" N, long. 106°52'06" W)

That airspace extending upward from the surface to and including 10,300 feet MSL within a 4.3-mile radius of Aspen-Pitkin County Airport/Sardy Field. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

*Paragraph 6002 Class E Airspace Designated as Surface Areas.*

\* \* \* \* \*

##### ANM CO E2 Aspen, CO [Amended]

Aspen-Pitkin County Airport/Sardy Field, CO

(Lat. 39°13'19" N, long. 106°52'06" W)

That airspace extending upward from the surface within a 4.3-mile radius of Aspen-Pitkin County Airport/Sardy Field. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

*Paragraph 6004 Class E Airspace Designated as an Extension to a Class D or Class E Surface Area.*

\* \* \* \* \*

##### ANM CO E4 Aspen, CO [Amended]

Aspen-Pitkin County Airport/Sardy Field, CO

(Lat. 39°13'19" N, long. 106°52'06" W)

That airspace extending upward from the surface within 3.5 miles west and 2.7 miles east of the 340° bearing from Aspen-Pitkin County Airport/Sardy Field, extending from the 4.3-mile radius to 7.8 miles north of the airport.

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

\* \* \* \* \*

##### ANM CO E5 Aspen, CO [Amended]

Aspen-Pitkin County Airport/Sardy Field, CO

(Lat. 39°13'19" N, long. 106°52'06" W)

That airspace extending upward from 700 feet above the surface within 6.6 miles west and 3.2 miles east of the 354° bearing from Aspen-Pitkin County Airport/Sardy Field extending from the airport to 11.1 miles north of the airport.

Issued in Seattle, Washington, on November 30, 2018.

**Shawn M. Kozica,**

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

[FR Doc. 2018–26804 Filed 12–13–18; 8:45 am]

**BILLING CODE 4910–13–P**

#### DEPARTMENT OF TRANSPORTATION

#### Federal Aviation Administration

#### 14 CFR Part 71

**[Docket No. FAA–2017–0223; Airspace Docket No. 17–ANM–9]**

**RIN 2120–AA66**

#### Amendment of Class D and E Airspace; Casper, WY

**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 or more above the surface, and removes Class E airspace designated as an extension, at Casper/Natrona County International Airport, Casper WY. After a biennial review, the FAA finds this action necessary to accommodate airspace redesign for the safety and management of instrument flight rules (IFR) operations within the National Airspace System. Also, this action updates the airport's name and geographic coordinates for the associated Class D and E airspace areas to reflect the FAA's current aeronautical database.

**DATES:** Effective 0901 UTC, February 28, 2019. 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 7400.11C, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at [http://www.faa.gov/air\\_traffic/publications/](http://www.faa.gov/air_traffic/publications/). For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA).

For information on the availability of this material at NARA, call (202) 741–6030, or go to <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

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

**FOR FURTHER INFORMATION CONTACT:** Bonnie Malgarini, Federal Aviation Administration, Operations Support Group, Western Service Center, 2200 S 216th Street, Des Moines, WA 98198–6547; telephone (206) 231–2329.

#### 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 modifies Class D and E airspace at Casper/Natrona County International Airport, Casper, WY, in support of IFR operations at the airport.

### History

The FAA published a notice of proposed rulemaking in the **Federal Register** (83 FR 4865; February 2, 2018) for Docket No. FAA-2017-0223 to amend Class D airspace; remove Class E airspace designated as an extension; reduce Class E airspace extending upward from 700 feet above the surface, and remove Class E airspace extending upward from 1,200 feet above the surface, at Casper/Natrona County International Airport, Casper WY. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. One comment was received from the Aircraft Owners and Pilots Association (AOPA).

AOPA stated that the NPRM did not comply with FAA guidance in Order 7400.2, Procedures for Handling Airspace Matters, because a graphic was not included in the docket.

Additionally, AOPA encouraged the FAA to follow their guidance in the Order by making the action effective date coincidental to the sectional chart publication date.

The FAA has determined AOPA's comments raised no substantive issues with respect to the proposed changes to the airspace addressed in the NPRM. To the extent the FAA failed to follow its policy guidance reference publishing graphics in the docket and establishing the Class D airspace effective date to match the sectional chart date, we note the following.

With respect to AOPA's comment addressing graphics, FAA Order 7400.2.L, para 2-3-3.c. requires the official docket to include available graphics. For this airspace action, a graphic was produced and added to the docket on February 15, 2018.

Specific to AOPA's comment regarding the FAA already creating a graphical depiction of new or modified airspace overlaid on a Sectional Chart for quality assurance purposes, this is not correct nor required in all cases. During the airspace reviews, airspace graphics may be created, if deemed necessary, to determine if there are any terrain issues, or if cases are considered complex. However, in many cases when developing an airspace amendment proposal, a graphic is not needed. It was unclear if the graphic AOPA suggested

was already created with a sectional chart background was actually the airspace graphic created by the Aeronautical Information Services office in preparation of publishing the sectional charts. However, that graphic is normally created after the rulemaking determination is published.

With respect to AOPA's comment addressing effective dates, FAA Order 7400.2L, para 2-3-7.a.4. states that, to the extent practicable, Class D airspace area and restricted area rules should become effective on a sectional chart date and that consideration should be given to selecting a sectional chart date that matches a 56-day en route chart cycle date. The FAA does consider publishing Class D airspace amendment effective dates to coincide with the publication of sectional charts, to the extent practicable; however, this consideration is accomplished after the NPRM comment period ends.

Substantive comments received to NPRMs, flight safety concerns, management of IFR operations at affected airports, and immediacy of requiring proposed airspace amendments are some of the factors that must be taken into consideration when selecting the appropriate effective date. After considering all factors, the FAA may determine that selecting an effective date that conforms to a 56-day enroute chart cycle date that is not coincidental to sectional chart dates is better for the NAS and users than awaiting the next sectional chart date.

Class D and E airspace designations are published in paragraph 5000, 6002, 6004, and 6005, respectively, of FAA Order 7400.11C, dated August 13, 2018, and effective September 15, 2018, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designation listed in this document will be published subsequently in the Order.

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

This document amends FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018. FAA Order 7400.11C is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11C lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

### The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 modifies Class D airspace and Class E surface area airspace at Casper/Natrona County International Airport (formerly

Natrona County International Airport) to within a 4.9-mile radius (from a 4.3-mile radius) of the airport from the airport 294° bearing clockwise to the airport 193° bearing, and within a 7-mile radius (from a 4.3-mile radius) of the airport from the 193° bearing clockwise to the airport 294° bearing.

This action also removes Class E airspace designated as an extension to Class D or E surface area.

Additionally, Class E airspace extending upward from 700 feet above the surface is reduced to within a 9.5-mile radius of the airport (from a 24-mile radius) from the airport 248° bearing clockwise to the airport 294° bearing, and within a 7-mile radius from the airport 294° bearing clockwise to the airport 004° bearing, with segments extending to 13.5 miles northeast, 10.4 miles east, 16.9 miles southwest. Also, Class E airspace extending upward from 1,200 feet above the surface is removed since it is wholly contained within the larger Casper Class E en route airspace, and duplication is not needed.

This rule also updates the airport's geographic coordinates in the associated Class D and E airspace to reflect the FAA's current aeronautical database. Lastly, this action replaces the outdated term "Airport/Facility Directory" with the term "Chart Supplement" in the Class D and associated Class E airspace legal descriptions. These modifications are necessary for the safety and management of IFR operations at the airport.

### 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, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental



Policy Act in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures," paragraph 5–6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

#### **Lists of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

#### **Adoption of the Amendment**

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

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

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

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

#### **§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, is amended as follows:

*Paragraph 5000 Class D Airspace.*

\* \* \* \* \*

#### **ANM WY D Casper, WY [Amended]**

Casper/Natrona County International Airport, WY

(Lat. 42°54'21" N, long. 106°27'49" W)

That airspace extending upward from the surface to and including 7,800 feet MSL within a 4.9-mile radius of Casper/Natrona County International Airport clockwise from the airport 294° bearing to the airport 193° bearing and within a 7-mile radius of the airport clockwise from the airport 193° bearing to the airport 294° bearing. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

*Paragraph 6002 Class E Airspace Designated as Surface Areas.*

\* \* \* \* \*

#### **ANM WY E2 Casper, WY [Amended]**

Casper/Natrona County International Airport, WY

(Lat. 42°54'21" N, long. 106°27'49" W)

That airspace extending upward from the surface within a 4.9-mile radius of Casper/Natrona County International Airport clockwise from the airport 294° bearing to the airport 193° bearing and within a 7-mile radius of the airport clockwise from the

airport 193° bearing to the airport 294° bearing. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

*Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D or Class E Surface Area.*

\* \* \* \* \*

#### **ANM WY E4 Casper, WY [Removed]**

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

\* \* \* \* \*

#### **ANM WY E5 Casper, WY [Amended]**

Casper/Natrona County International Airport, WY

(Lat. 42°54'21" N, long. 106°27'49" W)

That airspace upward from 700 feet above the surface within a 9.5-mile radius of Casper/Natrona County International Airport from the airport 248° bearing clockwise to the airport 294° bearing and within a 7-mile radius of the airport from the airport 294° bearing clockwise to the airport 004° bearing and within 3.9 miles northwest and 4.8 miles southeast of the airport 036° bearing extending from the airport to 13.5 miles northeast of the airport and within 3.6 miles each side of the airport 088° bearing extending from the airport to 10.4 miles east of the airport and within 4.1 miles each side of the airport 223° bearing extending from the airport to 17 miles southwest of the airport.

Issued in Seattle, Washington, on November 30, 2018.

**Shawn M. Kozica,**

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

[FR Doc. 2018–26802 Filed 12–13–18; 8:45 am]

**BILLING CODE 4910–13–P**

## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

#### **14 CFR Part 71**

**[Docket No. FAA–2018–0007; Airspace Docket No. 17–AWP–18]**

**RIN 2120–AA66**

#### **Amendment of Class E Airspace; Mesquite, NV**

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

**ACTION:** Final rule.

**SUMMARY:** This action modifies Class E airspace extending upward from 700 feet above the surface at Mesquite Airport, Mesquite, NV, by enlarging the area southwest of the airport and updating the airport's geographic coordinates to match the FAA's aeronautical database. These changes

are necessary to accommodate new area navigation (RNAV) procedures at this airport.

**DATES:** Effective 0901 UTC, February 28, 2019. 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 7400.11C, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at [http://www.faa.gov/air\\_traffic/publications/](http://www.faa.gov/air_traffic/publications/). For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA).

For information on the availability of this material at NARA, call (202) 741–6030, or go to <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

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

**FOR FURTHER INFORMATION CONTACT:** Bonnie Malgarini, Federal Aviation Administration, Operations Support Group, Western Service Center, 2200 S 216th Street, Des Moines, WA 98198–6547; telephone (206) 231–2329.

#### **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 modifies Class E airspace extending upward from 700 feet above the surface at Mesquite Airport, Mesquite, NV, by enlarging the area southwest of the airport and updating the airport's geographic coordinates to match the FAA's aeronautical database. These changes are necessary to accommodate new RNAV procedures at this airport.



## History

The FAA published a notice of proposed rulemaking in the **Federal Register** (83 FR 11443; March 15, 2018) for Docket No. FAA–2018–0007 to modify Class E airspace extending upward from 700 feet above the surface at Mesquite Airport, Mesquite, NV. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11C, dated August 13, 2018, and effective September 15, 2018, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

## Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018. FAA Order 7400.11C is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11C lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

## The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 modifies Class E airspace extending upward from 700 feet above the surface at Mesquite Airport, Mesquite, NV, by enlarging the area southwest of the airport and updating the airport's geographic coordinates to match the FAA's aeronautical database. These changes are necessary to accommodate new area navigation (RNAV) procedures at this airport.

## 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, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

## Environmental Review

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

## Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

## Adoption of the Amendment

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

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

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

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

### § 71.1 [Amended]

- 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, is amended as follows:

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

\* \* \* \* \*

### AWP NV E5 Mesquite, NV [Amended]

Mesquite Airport, NV  
(Lat. 36°49'59" N, long. 114°03'21" W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Mesquite Airport and within 2.5 miles northwest and 5.5 miles southeast of the airport 233° bearing extending from the airport to 10 miles southwest of the airport.

Issued in Seattle, Washington, on November 30, 2018.

**Shawn M. Kozica,**

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

[FR Doc. 2018–26796 Filed 12–13–18; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

[Docket No. FAA–2017–1148; Airspace Docket No. 17–AWP–30]

RIN 2120–AA66

### Removal of Class E Airspace; Mercury, NV

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

**ACTION:** Final rule.

**SUMMARY:** This action removes Class E airspace extending upward from 700 feet above the surface at Desert Rock Airport, Mercury, NV. This airspace is not required, as there are no instrument flight rules (IFR) operations at the airport.

**DATES:** Effective 0901 UTC, February 28, 2019. 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 7400.11C, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at [http://www.faa.gov/air\\_traffic/publications/](http://www.faa.gov/air_traffic/publications/). For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA).

For information on the availability of this material at NARA, call (202) 741–6030, or go to <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

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

### FOR FURTHER INFORMATION CONTACT:

Bonnie Malgarini, Federal Aviation Administration, Operations Support Group, Western Service Center, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–2329.

### 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 supports the removal of controlled airspace at Desert Rock Airport, Mercury, NV.

### History

The FAA published a notice of proposed rulemaking in the **Federal Register** (83 FR 7430; February 21, 2018) for Docket No. FAA–2017–1148 to remove Class E airspace extending upward from 700 feet above the surface at Desert Rock Airport, Mercury, NV. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11C, dated August 13, 2018, and effective September 15, 2018, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

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

This document amends FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018. FAA Order 7400.11C is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11C lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

### The Rule

The FAA is amending Title 14 Code of Federal Regulations (14 CFR) part 71 by removing Class E airspace extending upward from 700 feet above the surface at Desert Rock Airport, Mercury, NV.

### 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, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### Environmental Review

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

### Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### Adoption of the Amendment

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

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

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

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

#### § 71.1 [Amended]

- 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, is amended as follows:

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

\* \* \* \* \*

#### AWP CA E5 Mercury, NV [Removed]

Issued in Seattle, Washington, on December 7, 2018.

**Shawn M. Kozica,**

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

[FR Doc. 2018–27023 Filed 12–13–18; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

**Docket No. FAA–2018–0883; Airspace  
Docket No. 18–ANE–5]**

**RIN 2120–AA66**

#### **Amendment of Class E Airspace; Bethel, ME**

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

**ACTION:** Final rule.

**SUMMARY:** This action amends Class E airspace extending upward from 700 feet above the surface at Bethel Regional Airport, Bethel, ME, to accommodate new area navigation (RNAV) global positioning system (GPS) standard instrument approach procedures serving this airport. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations at this airport. This action also updates the geographic coordinates of this airport to be in concert with the FAA's aeronautical database.

**DATES:** Effective 0901 UTC, February 28, 2019. 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 7400.11C, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at [http://www.faa.gov/air\\_traffic/publications/](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 7400.11C 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 amends Class E airspace at Bethel Regional Airport, Bethel, ME, to support IFR operations at this airport.

### History

The FAA published a notice of proposed rulemaking in the **Federal Register** (83 FR 50050, October 4, 2018) for Docket No. FAA–2018–0883 to amend Class E airspace at Bethel Regional Airport, Bethel, ME, to support IFR operations at this airport.

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

Class E airspace designations are published in paragraph 6005, of FAA Order 7400.11C dated August 13, 2018, and effective September 15, 2018, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

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

This document amends FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018. FAA Order 7400.11C is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11C 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 Class E airspace extending upward from 700 feet or more above the surface within an 8.6-mile radius (increased from a 6-mile radius) of Bethel Regional Airport, Bethel, ME, providing the controlled airspace required to support the new RNAV (GPS) standard instrument approach

procedures for IFR operations at Bethel Regional Airport. The geographic coordinates of the airport are amended to coincide with the FAA's aeronautical database.

### 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. 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 5–6.5a. 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 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and

effective September 15, 2018, is amended as follows:

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

#### ANE ME E5 Bethel, ME [Amended]

Bethel Regional Airport, ME  
(Lat. 44°25'31" N, long. 70°48'36" W)

That airspace extending upward from 700 feet above the surface within an 8.6-mile radius of Bethel Regional Airport.

Issued in College Park, Georgia, on December 4, 2018.

**Ryan W. Almasy,**

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

[FR Doc. 2018–26801 Filed 12–13–18; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Docket No. FAA–2017–1033; Airspace Docket No. 17–ANM–19]

RIN 2120–AA66

### Amendment of Class D and Class E Airspace; Moses Lake, WA

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

**ACTION:** Final rule.

**SUMMARY:** This action modifies Class D airspace, Class E surface area airspace, Class E airspace designated as an extension, and Class E airspace extending upward from 700 and 1,200 feet above the surface at Grant County International Airport (formerly Grant County Airport), Moses Lake, WA. This action removes the Notice to Airmen (NOTAM) part-time status of Class E airspace designated as an extension, and updates the airport name and geographic coordinates for the airport in the associated Class D and E airspace areas to match the FAA's aeronautical database. These changes are necessary to accommodate airspace redesign for the safety and management of instrument flight rules (IFR) operations at the airport.

**DATES:** Effective 0901 UTC, February 28, 2019. 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 7400.11C, Airspace Designations and Reporting Points, and subsequent amendments can

be viewed online at [http://www.faa.gov/air\\_traffic/publications/](http://www.faa.gov/air_traffic/publications/). For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267-8783. The Order is also available for inspection at the National Archives and Records Administration (NARA).

For information on the availability of this material at NARA, call (202) 741-6030, or go to <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

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

**FOR FURTHER INFORMATION CONTACT:**

Bonnie Malgarini, Federal Aviation Administration, Operations Support Group, Western Service Center, 2200 S 216th Street, Des Moines, WA 98198-6547; telephone (206) 231-2329.

**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 modifies Class D and Class E surface airspace at Grant County International Airport, Moses Lake, WA, to support standard instrument approach procedures under IFR operations at the airport.

**History**

The FAA published a notice of proposed rulemaking in the **Federal Register** (83 FR 2018-19650; May 4, 2018) for Docket No. FAA-2017-1033 to modify Class D airspace, Class E surface area airspace, Class E airspace designated as an extension, and Class E airspace extending upward from 700 and 1,200 feet above the surface at Grant County International Airport, Moses Lake, WA. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. However, an error omitting the full radius of the Class D airspace was identified in the

legal description, and is corrected for the final rule.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11C, dated August 13, 2018, and effective September 15, 2018, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

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

This document amends FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018. FAA Order 7400.11C is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11C lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

**The Rule**

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 modifies Class D airspace, Class E surface area airspace, Class E airspace designated as an extension, and Class E airspace extending upward from 700 feet above the surface, and removing Class E airspace extending upward from 1,200 feet above the surface at Grant County International Airport, Moses Lake, WA.

Class D airspace is modified to a 5.3-mile radius (from a 5.7-mile radius) of the airport, and the excluded area southeast of the airport would be re-defined as "within an area bounded by a line beginning at the point where the 147° bearing from the airport intersects the 5.3-mile radius of the airport to lat. 47°09'59" N, long. 119°14'55" W, to the point where the 103° bearing from the airport intersects the airport 5.3-mile radius, thence clockwise along the 5.3-mile radius of the airport to the point of beginning."

Class E surface area airspace is modified to be coincident with the dimensions of the Class D airspace, and would be effective during the hours when the Class D is not in effect to protect IFR operations continuously.

Class E airspace designated as an extension to a Class D or Class E surface area is modified by removing the segments extending to the northeast (within 2.2 miles each side of the Moses Lake VOR/DME 050 radial extending from the 5.7-mile radius of the airport to 13.5 miles northeast of the VOR/DME, and within 3.5 miles each side of the Moses Lake VOR/DME 063° radial extending from the 5.7-mile radius of the airport to 12.9 miles northeast of the

VOR/DME). Also, the segment extending north of the airport is enlarged to within 4.2 miles west and 3.9 miles east of the 339° bearing from Grant County International Airport extending from the airport 5.3-mile radius to 15.3 miles north of the airport (from within 1.8 miles each side of the Ephrata VORTAC 156° radial extending from the 5.7-mile radius of Grant County Airport to 2.7 miles southeast of the VORTAC), excluding the Ephrata Municipal Airport, WA, Class E surface area airspace. Also, a small extension south of the airport is added within 1.0 mile each side of the airport 162° bearing extending from the 5.3-mile radius of the airport to 5.9 miles south of the airport. This action also removes the NOTAM part-time status of Class E airspace designated as an extension, which would be in effect continuously.

Class E airspace extending upward from 700 feet is modified to within a 7.1-mile (from a 16.6-mile) radius of Grant County International Airport, and within 3.8 miles southwest and 9-miles northeast of a 336° bearing extending from the airport to 27.5 miles northwest of the airport, and within 4 miles north and 8 miles south of the 069° bearing from the airport extending to 22.3 miles east of the airport, and within 8 miles east and 4 miles west of the 162° bearing from the airport extending to 22 miles south of the airport, and within 4-miles northwest and 8 miles southeast of the 223° bearing from the airport extending to 21.5 miles southwest of the airport (from a 16.6-mile radius of the Ephrata VORTAC). Also, the Class E airspace extending upward from 1,200 feet above the surface at the airport is removed as it is wholly contained within the larger Spokane Class E en route airspace area, and duplication is not necessary.

Additionally, this action updates the airport name from Grant County Airport to Grant County International Airport, and the geographic coordinates for the associated Class D and Class E airspace areas to match the FAA's aeronautical database.

Finally, an editorial change is made to the Class D and Class E airspace legal descriptions replacing "Airport/Facility Directory" with the term "Chart Supplement". An editorial change is also made removing the city associated with the airport name in the airspace designation to comply with a recent change to FAA Order 7400.2L, Procedures for Handling Airspace Matters, dated October 12, 2017.

Class D and Class E airspace designations are published in paragraph 5000, 6002, 6004, and 6005, respectively, of FAA Order 7400.11C, dated August 13, 2018, and effective

September 15, 2018, 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, 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, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### Environmental Review

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

### Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### Adoption of the Amendment

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

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

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

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

#### § 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11C,

Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, is amended as follows:

#### Paragraph 5000 Class D Airspace.

\* \* \* \* \*

#### ANM WA D Moses Lake, WA [Amended]

Grant County International Airport, WA  
(Lat. 47°12′31″ N, long. 119°19′09″ W)

That airspace extending upward from the surface to and including 3,700 feet MSL within a 5.3-mile radius of Grant County International Airport, excluding that airspace within an area bounded by a line beginning at the point where the 147° bearing from the airport intersects the 5.3-mile radius of the airport to lat. 47°09′59″ N, long. 119°14′55″ W, to the point where the 103° bearing from the airport intersects the airport 5.3-mile radius, thence clockwise along the 5.3-mile radius of the airport to the point of beginning. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

#### Paragraph 6002 Class E Airspace Designated as Surface Areas.

\* \* \* \* \*

#### ANM WA E2 Moses Lake, WA [Amended]

Grant County International Airport, WA  
(Lat. 47°12′31″ N, long. 119°19′09″ W)

That airspace extending upward from the surface within a 5.3-mile radius of Grant County International Airport, excluding that airspace within an area bounded by a line beginning at the point where the 147° bearing from the airport intersects the 5.3-mile radius of the airport to lat. 47°09′59″ N, long. 119°14′55″ W, to the point where the 103° bearing from the airport intersects the airport 5.3 mile radius, thence clockwise along the 5.3-mile radius of the airport to the point of beginning. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

\* \* \* \* \*

#### ANM WA E4 Moses Lake, WA [Amended]

Grant County International Airport, WA  
(Lat. 47°12′31″ N, long. 119°19′09″ W)

That airspace extending upward from the surface within 4.2 miles west and 3.9 miles east of the 339° bearing from Grant County International Airport extending from the airport 5.3-mile radius to 15.3 miles north of the airport, and within 1.0 mile each side of the airport 162° bearing extending from the 5.3-mile radius of the airport to 5.9 miles south of the airport, excluding that airspace within the Ephrata Municipal Airport, WA, Class E surface area.

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

\* \* \* \* \*

#### ANM WA E5 Moses Lake, WA [Amended]

Grant County International Airport, WA  
(Lat. 47°12′31″ N, long. 119°19′09″ W)

That airspace upward from 700 feet above the surface within a 7.1-mile radius of Grant County International Airport, and within 3.8 miles southwest and 9-miles northeast of a 336° bearing extending from the airport to 27.5 miles northwest of the airport, and within 4 miles north and 8 miles south of the 069° bearing from the airport extending to 22.3 miles east of the airport, and within 8 miles east and 4 miles west of the 162° bearing from the airport extending to 22 miles south of the airport, and within 4-miles northwest and 8 miles southeast of the 223° bearing from the airport extending to 21.5 miles southwest of the airport.

Issued in Seattle, Washington, on November 30, 2018.

**Shawn M. Kozica,**

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2018–26805 Filed 12–13–18; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Docket No. FAA–2018–0485; Airspace Docket No. 18–ASO–10]

**RIN 2120–AA66**

#### Establishment of Class E Airspace; Leitchfield, KY

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

**ACTION:** Final rule.

**SUMMARY:** This action establishes Class E airspace extending upward from 700 feet above the surface at Leitchfield-Grayson County Airport, Leitchfield, KY, to accommodate new area navigation (RNAV) global positioning system (GPS) standard instrument approach procedures serving the airport. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations at this airport.

**DATES:** Effective 0901 UTC, February 28, 2019. 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 7400.11C, Airspace Designations and Reporting Points, and subsequent amendments can be viewed on line at [http://www.faa.gov/air\\_traffic/publications/](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 7400.11C 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 Ave., 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 proposed 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 at Leitchfield-Grayson County Airport, Leitchfield, KY, to support IFR operations in standard instrument approach procedures at this airport.

##### **History**

The FAA published a notice of proposed rulemaking in the **Federal Register** (83 FR 49506, October 2, 2018) for Docket No. FAA-2018-0485 to establish Class E airspace extending upward from 700 feet above the surface at Leitchfield-Grayson County Airport, Leitchfield, KY. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. One comment in support of the proposal was received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11C dated August 13, 2018, and effective September 15, 2018, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace

designations listed in this document will be published subsequently in the Order.

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

This document amends FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018. FAA Order 7400.11C is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11C lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

##### **The Rule**

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 establishes Class E airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Leitchfield-Grayson County Airport, Leitchfield, KY, providing the controlled airspace required to support the new RNAV (GPS) standard instrument approach procedures for IFR operations at this airport.

##### **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. 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 5-6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

##### **Lists of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

##### **Adoption of the Amendment**

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

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

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

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

##### **§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, effective September 15, 2018, is amended as follows:

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

##### **ASO KY E5 Leitchfield, KY [New]**

Leitchfield-Grayson County Airport, KY  
(Lat. 37°23'59" N, long. 86°15'41" W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Leitchfield-Grayson County Airport.

Issued in College Park, Georgia, on December 4, 2018.

**Ryan W. Almasy,**

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

[FR Doc. 2018-26800 Filed 12-13-18; 8:45 am]

**BILLING CODE 4910-13-P**

## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

#### **14 CFR Part 95**

[Docket No. 31228; Amdt. No. 543]

#### **IFR Altitudes; Miscellaneous Amendments**

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes

occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

**DATES:** *Effective Date:* 0901 UTC, January 3, 2019.

**FOR FURTHER INFORMATION CONTACT:** Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg 29 Room 104, Oklahoma City, OK 73125. Telephone: (405) 954-4164.

**SUPPLEMENTARY INFORMATION:** This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

#### The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is

adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

#### Conclusion

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. 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. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

#### List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, DC on November 30, 2018.

**Rick Domingo,**

*Executive Director, Flight Standards Service.*

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, January 3, 2019.

■ 1. The authority citation for part 95 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

■ 2. Part 95 is amended to read as follows:

#### REVISIONS TO IFR ALTITUDES & CHANGEOVER POINT

[Amendment 543 Effective Date January 3, 2019]

From	To	MEA	MAA
§ 95.3000 Low Altitude RNAV Routes			
§ 95.3227 RNAV Route T227 Is Amended To Read in Part			
JANNT, AK WP ..... *2900—MOCA.	BAERE, AK WP .....	7500	17500
BAERE, AK WP ..... *3300—MOCA.	ALEUT, AK WP .....	7500	17500
§ 95.3705 RNAV Route T705 Is Amended To Read in Part			
PBERG, NY WP ..... *3700—MCA LATTIS, NY WP, S BND.	*LATTIS, NY WP .....	3900	17500
§ 95.3781 RNAV Route T781 Is Amended To Read in Part			
Flint, MI VORTAC ..... *2300—MOCA.	KATTY, MI FIX .....	3000	17500
From	To	MEA	
§ 95.6001 Victor Routes—U.S.			
§ 95.6007 VOR Federal Airway V7 Is Amended To Read in Part			
CHICAGO HEIGHTS, IL VORTAC ..... *2700—MCA LAIRD, IL FIX, S BND.	*LAIRD, IL FIX .....	3500	
PETTY, WI FIX ..... #UNUSABLE	PROOT, WI FIX .....	#	
PROOT, WI FIX ..... #UNUSABLE.	FALLS, WI VOR/DME .....	#	

From	To	MEA
<b>§ 95.6012 VOR Federal Airway V12 Is Amended To Read in Part</b>		
BIBLE GROVE, IL VORTAC .....	WORKE, IL FIX. SW BND ..... NE BND .....	2300 6000
<b>§ 95.6023 VOR Federal Airway V23 Is Amended To Read in Part</b>		
RAWER, OR FIX .....	BATTLE GROUND, WA VORTAC .....	4100
<b>§ 95.6072 VOR Federal Airway V72 Is Amended To Delete</b>		
BIBLE GROVE, IL VORTAC .....	MATTOON, IL VOR/DME .....	2500
MATTOON, IL VOR/DME .....	BLOOMINGTON, IL VOR/DME .....	2700
<b>§ 95.6097 VOR FEDERAL AIRWAY V97 Is Amended To Delete</b>		
*FARMM, IL FIX ..... *10000—MRA.	JANESVILLE, WI VOR/DME .....	2900
<b>Is Amended By Adding</b>		
KRENA, IL FIX .....	JANESVILLE, WI VOR/DME .....	2900
<b>Is Amended To Read in Part</b>		
CHICAGO HEIGHTS, IL VORTAC .....	NILES, IL FIX .....	3500
<b>Is Amended To Delete</b>		
NILES, IL FIX .....	BEBEE, IL FIX .....	3400
<b>§ 95.6112 VOR Federal Airway V112 Is Amended To Read in Part</b>		
PITER, OR FIX ..... *5000—MCA BATTLE GROUND, WA VORTAC, E BND. *6500—MOCA BATTLE GROUND, WA VORTAC .....	*BATTLE GROUND, WA VORTAC ..... KLICKITAT, OR VOR/DME .....	4400 *7000
<b>§ 95.6128 VOR Federal Airway V128 Is Amended To Read in Part</b>		
SWIFT, WV FIX .....	BITES, WV FIX. W BND ..... E BND .....	5000 7000
<b>§ 95.6170 VOR Federal Airway V170 Is Amended To Read in Part</b>		
RAINE, MI FIX .....	Pullman, MI VOR/DME .....	2400
<b>§ 95.6177 VOR Federal Airway V177 Is Amended To Read in Part</b>		
WAUSAU, WI VORTAC ..... #UNUSABLE.	BAITS, WI FIX .....	#
BAITS, WI FIX ..... #UNUSABLE.	Hayward, WI VOR/DME .....	#
HAYWARD, WI VOR/DME ..... #USUABLE.	DULUTH, MN VORTAC .....	#
<b>§ 95.6182 VOR Federal Airway V182 Is Amended To Read in Part</b>		
NEWBERG, OR VOR/DME ..... *5000—MCA BATTLE GROUND, WA ..... BATTLE GROUND, WA VORTAC ..... *6500—MOCA.	*BATTLE GROUND, WA VORTAC ..... VORTAC, E BND. KLICKITAT, OR VOR/DME .....	4100 *7000
<b>§ 95.6194 VOR Federal Airway V194 Is Amended To Read in Part</b>		
CEDAR CREEK, TX VORTAC .....	KISER, TX FIX .....	2300
<b>§ 95.6210 VOR Federal Airway V210 Is Amended To Read in Part</b>		
PIRRO, CA FIX ..... *10400—MCA POMONA, CA .....	*POMONA, CA VORTAC ..... VORTAC, NE BND. CALBE, CA FIX.	4500
POMONA, CA VORTAC .....	SW BND ..... NE BND .....	5700 10800
MEANT, CA FIX .....	*APLES, CA FIX .....	11800



From	To	MEA	
*9200—MCA APLES, CA .....	FIX, SW BND.		
<b>§ 95.6217 VOR Federal Airway V217 Is Amended To Read in Part</b>			
*BESIE, IL FIX .....	BADGER, WI VOR/DME .....	2900	
*10000—MRA.			
<b>Is Amended To Delete</b>			
FARM, IL FIX .....	BESIE, IL FIX .....	2500	
<b>§ 95.6228 VOR Federal Airway V228 Is Amended To Delete</b>			
BESIE, IL FIX .....	FARM, IL FIX .....	2500	
<b>§ 95.6310 VOR Federal Airway V310 Is Amended To Read in Part</b>			
ROSAR, KY FIX .....	*HOLSTON MOUNTAIN, TN VORTAC .....	6900	
*6900—MCA HOLSTON MOUNTAIN, TN .....	VORTAC, E BND.		
HOLSTON MOUNTAIN, TN VORTAC .....	STAIN, TN FIX .....	6900	
STAIN, TN FIX .....	*BURCH, NC FIX .....	8500	
*8500—MCA BURCH, NC .....	FIX, W BND.		
<b>§ 95.6316 VOR Federal Airway V316 Is Amended To Read in Part</b>			
IRONWOOD, MI VOR/DME .....	SAWYER, MI VOR/DME .....	*6000	
*3700—MOCA.			
<b>§ 95.6394 VOR Federal Airway V394 Is Amended To Read in Part</b>			
AHEIM, CA FIX .....	*POMONA, CA VORTAC .....	4000	
*10400—MCA POMONA, CA .....	VORTAC, NE BND.		
POMONA, CA VORTAC .....	CALBE, CA FIX.		
	SW BND .....	5700	
	NE BND .....	10800	
MEANT, CA FIX .....	*APLES, CA FIX .....	11800	
*9200—MCA APLES, CA .....	FIX, SW BND.		
<b>§ 95.6413 VOR Federal Airway V413 Is Amended To Read in Part</b>			
EAU CLAIRE, WI VORTAC .....	RUSSE, WI FIX.		
	SW BND .....	*6000	
	NE BND .....	*8000	
*2900—MOCA.			
<b>§ 95.6422 VOR Federal Airway V422 Is Amended To Read in Part</b>			
NILES, IL FIX .....	Chicago Heights, IL VORTAC .....	3500	
<b>Is Amended To Delete</b>			
BEBEE, IL FIX .....	*NILES, IL FIX .....	3400	
*3500—MRA.			
*3000—MCA .....	NILES, IL .....		FIX, N BND
<b>§ 95.6429 VOR Federal Airway V429 Is Amended To Delete</b>			
BIBLE GROVE, IL VORTAC .....	MATTOON, IL VOR/DME .....	2500	
MATTOON, IL VOR/DME .....	CHAMPAIGN, IL VORTAC .....	2400	
<b>§ 95.6571 VOR Federal Airway V571 Is Amended To Read in Part</b>			
LEONA, TX VORTAC .....	CEDAR CREEK, TX VORTAC .....	2300	
From	To	MEA	MAA
<b>§ 95.7001 Jet Routes</b>			
<b>§ 95.7208 Jet Route J208 Is Amended To Read in Part</b>			
ATHENS, GA VOR/DME .....	LIBERTY, NC VORTAC .....	#	45000
#UNUSABLE.			

Airway Segment		Changeover Points	
From	To	Distance	From
<b>§ 95.8003 VOR Federal Airway Changeover Point</b>			
<b>V177 Is Amended To Delete Changeover Point</b>			
WAUSAU, WI VORTAC .....	HAYWARD, WI VOR/DME .....	59	WAUSAU
HAYWARD, WI VOR/DME .....	DULUTH, MN VORTAC .....	42	HAYWARD
<b>V228 Is Amended To Delete Changeover Point</b>			
MADISON, WI VORTAC .....	NORTHBROOK, IL VOR/DME .....	56	MADISON
<b>V316 Is Amended To Modify Changeover Point</b>			
IRONWOOD, MI VORTAC .....	SAWYER, MI VOR/DME .....	94	IRONWOOD

[FR Doc. 2018–27030 Filed 12–13–18; 8:45 am]

BILLING CODE 4910–13–P

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****15 CFR Part 902****50 CFR Part 648**

[Docket No. 170828816–8999–02]

RIN 0648–BH16

**Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish; Amendment 20**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS approves and implements through regulations measures included in Amendment 20 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan, as adopted by the Mid-Atlantic Fishery Management Council. This action is necessary to prevent the reactivation of latent effort in the longfin squid fishery, preserve economic opportunities for more recently active participants in the longfin squid fishery, avoid overharvest during Trimester II (May–August) of the longfin squid fishery, and reduce potential negative impacts on inshore spawning longfin squid aggregations and squid egg masses. This action is intended to promote the sustainable utilization and conservation of the squid and butterfish resources, while promoting the sustained participation of fishing communities and minimizing adverse economic impacts on such communities.

**DATES:** This final rule is effective March 1, 2019.

**ADDRESSES:** The Mid-Atlantic Fishery Management Council prepared an environmental assessment (EA) for this action that describes the Council's preferred measures and other considered alternatives and the potential impacts of such alternatives. Copies of the Amendment 20 document, including the EA, the Regulatory Impact Review (RIR), and the Regulatory Flexibility Act (RFA) analysis are available on request from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, DE 19901, telephone (302) 674–2331. The EA/RIR/RFA analysis is also accessible via the internet at <http://www.mafmc.org/s/Squid-Amendment-EA.pdf> and [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2017-0110](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2017-0110). Copies of the small entity compliance guides prepared for this action are available from Michael Pentony, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930–2298, or available on the internet at: <https://www.greateratlantic.fisheries.noaa.gov/sustainable/species/>.

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

**FOR FURTHER INFORMATION CONTACT:** Douglas Christel, Fishery Policy Analyst, (978) 281–9141, [douglas.christel@noaa.gov](mailto:douglas.christel@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

The purpose of Amendment 20 is to reduce latent (unused) effort in the longfin squid fishery and adjust the management of the fishery during Trimester II to avoid overharvesting the longfin squid resource and harming squid egg masses. The Mid-Atlantic Fishery Management Council is concerned that unused longfin squid/butterfish moratorium permits could be activated. This could lead to excessive fishing effort, which could lead to premature fishery closures and reduced access to available longfin squid quota by vessels with a history of higher landings in recent years. Excessive effort may also increase the bycatch and discards of both longfin squid and non-target species. The measures adopted by the Council are intended to help prevent excessive catch during Trimester II, a race to fish, frequent and disruptive fishery closures, and reduced fishing opportunities for vessels that are more recently dependent upon longfin squid. Additional information on the mackerel, squid, and butterfish fisheries can be found online at <http://www.mafmc.org/msb/> and <https://www.greateratlantic.fisheries.noaa.gov/sustainable/species/msb/index.html>.

On June 7, 2017, the Council adopted final measures for Amendment 20, submitting the draft amendment and EA to NMFS for preliminary review on June 6, 2018. NMFS published a Notice of Availability (NOA) in the **Federal Register** on July 27, 2018 (83 FR 35602), informing the public that the Council had submitted this amendment to the Secretary of Commerce for review and approval. NMFS published a proposed rule that included implementing regulations and corrections to existing regulations on August 31, 2018 (83 FR 44548). The public comment period for the NOA ended on September 25, 2018, while proposed rule comments were accepted through October 1, 2018. After

considering public comment on both the NOA and proposed rule, NMFS approved Amendment 20 and the associated measures outlined in the proposed rule on October 22, 2018.

### Approved Measures

NMFS approved all measures proposed in Amendment 20, as described below.

#### 1. Separate Butterfish Moratorium Permit

This action separates the current longfin squid/butterfish moratorium permit into a new butterfish moratorium permit and a separate, revised longfin squid moratorium permit, as described further below. The Regional Administrator will automatically issue a new butterfish moratorium permit to all entities currently issued a 2018 longfin squid/butterfish moratorium permit, including those held in confirmation of permit history (CPH) in February 2019, as part of the annual permit renewal process. The new butterfish moratorium permit will become effective on March 1, 2019.

The existing permit restrictions and vessel trip report (VTR), observer, slippage, and transfers-at-sea requirements applicable to longfin squid/butterfish moratorium permits also apply to the new butterfish moratorium permit, as listed below. Butterfish moratorium permits will maintain existing vessel permit baseline characteristics, vessel replacement and upgrade provisions, and the restriction on permit splitting associated with the previous longfin squid/butterfish moratorium permit. The new butterfish moratorium permit must maintain an operational vessel monitoring system (VMS) unit to provide NMFS with automatic position reports, but is not required to submit a specific butterfish trip declaration using the VMS or submit daily VMS catch reports of butterfish. For example, a vessel operator targeting butterfish can continue to declare a longfin squid trip via VMS if the operator anticipates catching more than an incidental amount of longfin squid on that trip. Finally, the existing butterfish possession limits specified at 50 CFR 648.26(d)(1) and (2) (unlimited when fishing with a mesh size of 3 inches (76 mm) or greater, and 5,000 lb (2,268 kg) per trip when fishing with less than 3-inch (76-mm) mesh) remain the same for this new permit.

#### 2. Tier 1 Longfin Squid Moratorium Permit

In February 2019, the Regional Administrator will automatically issue a

new Tier 1 longfin squid moratorium permit to any vessel currently issued a 2018 longfin squid/butterfish moratorium permit, including those currently held in CPH, that landed at least 10,000 lb (4,536 kg) of longfin squid in any year from 1997–2013. Eligibility will be based on fishing history documented through dealer reports. The new Tier 1 longfin squid moratorium permit will become effective March 1, 2019.

Any vessel owner, including those automatically issued a Tier 2 permit described below, may apply for a Tier 1 longfin squid permit through February 29, 2020. The Regional Administrator will notify any vessel owner that does not qualify to be issued a new Tier 1 longfin squid moratorium permit based on the criteria described above. An owner could appeal that decision within 30 days of the denial notice by submitting a written request to the Regional Administrator. Appeals could be based upon evidence that the information used in the original denial was incorrect. During an appeal, a vessel owner could request the Regional Administrator authorize his/her vessel to continue fishing for longfin squid under the measures for a Tier 1 permit until that appeal is completed. The NOAA Fisheries National Appeals Office will review all appeals submitted to the Regional Administrator.

Tier 1 longfin squid moratorium permits are subject to all measures applicable to the existing longfin squid/butterfish moratorium permit, including, but not limited to, the vessel baseline and upgrade, VTR and VMS reporting, observer, slippage, and transfers at sea requirements. A Tier 1 longfin squid moratorium permit may land an unlimited amount of longfin squid per trip, unless the directed longfin squid fishery is closed and incidental limits are implemented, as described further below. Tier 1 permits may possess up to 15,000 lb (6,804 kg) of longfin squid per trip after the longfin squid fishery is closed in Trimester II, provided the vessel is declared into the *Illex* squid fishery, possesses at least 10,000 lb (4,536 kg) of *Illex* squid, and is fishing offshore in the area defined in the current regulations at § 648.23(a)(5).

#### 3. Tier 2 Longfin Squid Moratorium Permit

In February 2019, the Regional Administrator will automatically issue a Tier 2 longfin squid moratorium permit to any vessel currently issued a 2018 longfin squid/butterfish moratorium permit, including those held in CPH, that does not qualify for a Tier 1 longfin squid moratorium permit based on the

criteria described above. The Tier 2 permit will become effective March 1, 2019.

A Tier 2 permit is subject to all measures applicable to the existing longfin squid/butterfish moratorium permit, including, but not limited to, the permit, VTR and VMS reporting, observer, slippage, and transfers at sea requirements. However, a Tier 2 permit is only allowed to land up to 5,000 lb (2,268 kg) of longfin squid per trip, unless the directed longfin squid fishery is closed and incidental limits are implemented, as described further below. A Tier 2 moratorium permit may continue to possess up to 5,000 lb (6,804 kg) of longfin squid per trip after the longfin squid fishery is closed in Trimester II if the vessel is declared into the *Illex* squid fishery, possesses at least 10,000 lb (4,536 kg) of *Illex* squid, and is fishing offshore in the area specified at § 648.23(a)(5).

#### 4. Tier 3 Longfin Squid Incidental Permit

Amendment 20 creates a new Tier 3 longfin squid moratorium permit for vessels previously issued an open access squid/butterfish incidental catch permit that landed more than 5,000 lb (2,268 kg) of longfin squid in at least one calendar year from 1997–2013. A vessel owner must apply for a Tier 3 longfin squid moratorium permit by submitting an application to the Regional Administrator by February 29, 2020.

The Regional Administrator will notify the owner of a vessel permit that does not qualify for a new Tier 3 longfin squid moratorium permit. An owner can appeal that decision within 30 days of the denial notice by submitting a written request to the Regional Administrator. The NOAA Fisheries National Appeals Office will review all appeals submitted to the Regional Administrator. Appeals can be based upon evidence that the information used in the original denial was incorrect. During an appeal, a vessel owner can request the Regional Administrator to authorize its vessel to continue fishing for longfin squid under the measures for a Tier 3 longfin squid permit until that appeal is completed.

A vessel issued a Tier 3 longfin squid permit is subject to all measures applicable to the existing squid/butterfish incidental catch permit. Unlike Tier 1 or 2 longfin squid moratorium permits, Tier 3 permits are not issued a vessel baseline and are not subject to the vessel upgrade provisions. A Tier 3 longfin squid moratorium permit may land up to 2,500 lb (1,134 kg) of longfin squid per trip, unless the

directed longfin squid fishery is closed during Trimester II and incidental limits are implemented, as described further below.

#### 5. Longfin Squid Moratorium Permit Swap

Amendment 20 allows an owner of more than one longfin squid/butterfish moratorium permit as of May 26, 2017, a one-time opportunity to move longfin squid moratorium permits onto a different vessel that they own to optimize their fishing operations. A vessel owner may move a qualified Tier 1 longfin squid moratorium permit from one of his/her vessels and place it on another vessel issued a Tier 2 longfin squid moratorium permit that is owned by that same entity. In this exchange, the Tier 2 longfin squid moratorium permit would be moved onto the vessel originally issued the Tier 1 longfin squid moratorium permit to complete the “swap” of permits.

Only permits issued to vessels owned by the same business entity as of May 26, 2017, are able to participate in the permit swap; a permit held in CPH as of May 26, 2017, is not eligible to participate in this transaction. Vessels involved in the swap must be within 10 percent of the baseline length overall and 20 percent of the baseline horsepower of the permit to be placed on each vessel. Only Tier 1 and Tier 2 longfin squid moratorium permits may be transferred as part of this permit swap; no other fishery permits can be swapped as part of this transaction. An owner must apply for the permit swap within one year of the issuance of the Tier 1 or Tier 2 longfin squid moratorium permits. A longfin squid moratorium permit swap application form is available upon request from the Regional Administrator (see **ADDRESSES**).

#### 6. Incidental Longfin Squid Possession Limit

Amendment 20 reduces the longfin squid possession limit from 2,500 lb (1,134 kg) per trip to 250 lb (113 kg) per trip for vessels issued an open access squid/butterfish incidental permit, and for all longfin squid permits once the Trimester II quota has been landed. The longfin squid incidental limit applicable to all longfin squid moratorium permits remains 2,500 lb (1,134 kg) per trip for any longfin squid fishery closure implemented during Trimesters I or III.

#### 7. Corrections and Clarifications to Existing Regulations

In § 648.2, the term “Northeast Regional Office” in the definition of “Atlantic Mackerel, Squid, and

Butterfish Monitoring Committee” is replaced by “Greater Atlantic Regional Fisheries Office.” This rule also adds definitions for “Calendar day,” “Directed fishery,” and “Incidental catch.”

In § 648.4(a)(5)(iii), paragraphs (C), (D), (E), (H) are revised and paragraph (M) is deleted to eliminate outdated and unnecessary regulations regarding Atlantic mackerel moratorium permit qualifications.

In § 648.7, text at (a)(1)(i) and (ii) that was inadvertently deleted in the final rule implementing the Mid-Atlantic Unmanaged Forage Omnibus Amendment (August 28, 2017; 82 FR 40721) is reinserted.

In § 648.10(e)(5)(i), the phrase “. . . or monkfish fishery” is replaced with “monkfish, or any other fishery” to maintain consistency with other language in this paragraph and related text in paragraph (e)(5)(ii).

In § 648.13, paragraph (a) is revised to clarify that longfin squid, *Illex* squid, and butterfish moratorium permits and squid/butterfish incidental catch permits must be issued a letter of authorization by the Regional Administrator to transfer longfin squid, butterfish, or *Illex* squid at sea.

In § 648.14, the following corrections are made:

1. The introductory text to paragraph (g)(1)(i) is revised to insert reference to the fishery closure and accountability measure regulations at § 648.24(d) and to replace “Take, retain . . .” with “Take and retain . . .”

2. Paragraph (g)(1)(ii)(B) is revised to use the term “*Illex* squid.”

3. Paragraph (g)(2)(i) is revised to reference Subpart B instead of § 648.22.

4. Paragraph (g)(2)(ii)(D) and (F) are revised to read that it is unlawful for any person owning or operating a vessel issued a valid mackerel, squid, and butterfish fishery permit, or issued an operator’s permit to “Take and retain, possess, or land” these species instead of “Take, retain, possess, or land” these species.

5. Paragraph (g)(2)(v) is revised to replace “limited access” with “directed” to reference the Atlantic mackerel, longfin squid, and *Illex* squid fisheries.

In § 648.22, the following corrections are made:

1. In paragraph (a), species headings are added to clarify which elements are to be identified for each species during the specifications process and to spell out terms used for the first time in the regulations.

2. The term “*Illex* squid” replaces the term “*Illex*” for clarity in several paragraphs.

3. In paragraph (c)(3), the reference to § 648.4(1)(5)(ii) is replaced with reference to § 648.4(a)(5)(vi).

In § 648.25(a)(4)(i), the reference to paragraph (a)(2) would be replaced with the accurate reference to paragraph (a)(3) of that section.

#### Comments and Responses

During the public comment periods for the NOAA and the proposed rule for this amendment, we received six comments from six individuals, two of which were not responsive to the action. One individual expressed general opposition to the rule, Lund’s Fisheries supported all proposed measures, and Pew Charitable Trusts along with one individual supported some, but not all of the proposed measures. The following discussion summarizes the issues raised in the comments that were relevant to this action and associated NMFS’s responses. Please note that, pursuant to section 304(a)(3) of the Magnuson-Stevens Act, when NMFS considers the responses to comments, NMFS may only approve or disapprove measures proposed in a particular fishery management plan, amendment, or framework adjustment, and may not change or substitute any measure in a substantive way.

#### General Comments

**Comment 1:** Pew Charitable Trusts recommended that NMFS disapprove the Council’s decision to not implement a spawning closure under Amendment 20. Pew suggested NMFS implement a 12-mile spawning closure for bottom trawl vessels south of Marthas Vineyard and Nantucket to limit the catch of pre-spawned squid, bycatch of squid egg mops and predator species, and negative impacts to squid egg mops and the greater ecosystem. Pew asserts that the Council’s decision to not implement a spawning closure is inconsistent with analysis in the Amendment 20 EA, stating that spawning closure options were analyzed in full during the amendment process and are supported by the best available science.

**Response:** As noted above, NMFS may only approve or disapprove measures proposed in a particular amendment. Because the Council did not adopt a spawning closure area in this action, there is nothing for us to disapprove in Amendment 20 and we cannot unilaterally implement such a closure through this action.

The Amendment 20 EA includes some analysis of the impacts of squid fishing on squid egg mops and future recruitment and fishery catch, but does not include any analysis of specific closure areas considered early in the

development of this action. The Council decided to remove such areas from further consideration at its December 2016 meeting for possible development in a future action. The Council understood the interest in such areas to be more related to user conflicts than squid productivity, as closure areas would likely shift effort from one small area into other areas during Trimester II without reducing overall catch. At its December 2017 meeting, the Council deferred further development of spawning closures until it could evaluate the effects of measures included in Amendment 20, suggesting that the Amendment 20 measures may be sufficient to address some of the concerns regarding excessive fishing effort south of Martha's Vineyard and Nantucket.

#### **Longfin Squid and Butterfish Moratorium Permits**

*Comment 2:* One individual suggested that there should be zero moratorium permits, indicating that fish species are being overfished and going extinct due to insufficient enforcement of vessel catch. Lund's Fisheries supported the creation of the longfin squid tiered permitting system, stating that it better controls longfin squid landings, avoids excessive catch following the closure of the Trimester II fishery, minimizes discards of other species, prevents the reactivation of latent effort, and maximizes economic opportunities for active participants. Lund's Fisheries also noted that the Tier 2 permit preserves more recent fishing patterns and minimizes squid discards when targeting other species, while the Tier 3 permit eliminates a loophole that previously allowed owners to cancel their federal longfin squid permits to take advantage of higher landing allowances in state waters. Finally, Lund's Fisheries supported creating a separate butterfish moratorium permit, stating that it avoids unintentionally reducing domestic fishing capacity for butterfish.

*Response:* We disagree that there should be zero moratorium permits. As noted by Lund's Fisheries, limiting access to a fishery through moratorium permits provides many benefits to the fishery and the resource, including greater control of fishery landings by limiting the number of vessels that may participate in the fishery and how much each vessel may catch. The Tier 3 permit covers past incidental catch of longfin squid, particularly by vessels targeting other species such as whiting. This should help reduce the potential for excessive fishing effort, better control longfin squid catch, and avoid

discards that may have otherwise occurred under the reduced longfin squid possession limit for open access squid/butterfish incidental permits implemented by this action. A separate butterfish permit preserves fishing opportunities for that species and could help maintain or even expand a domestic fishery consistent with the objectives of the FMP. Therefore, we approved the Amendment 20 changes to longfin squid and butterfish moratorium permits, and we are implementing the proposed regulations through this final rule.

*Comment 3:* One individual supported a tiered longfin squid permit system, but indicated the proposed landings qualification criteria (less than 30 lb (14 kg) per day) is too low, does not represent even part-time fishing for longfin squid, and is not fair to full-time squid vessels that originally developed this fishery.

*Response:* The Council recognized that the preferred landings qualification criteria represents just four trips under the current incidental trip limit to enable more vessels to re-qualify, noting that only the least active vessels would be impacted by this action. By only considering landings through 2013 (the control date established for the fishery), the qualification criteria exclude vessels that had been inactive until recently, including those that re-entered the fishery in 2016 when participation increased substantially due to higher than average catch rates that season. This addresses the main concern raised during scoping hearings and preserves the greatest access to those most active in the fishery. The creation of a Tier 2 permit recognizes historic participation in the fishery, and provides such vessels with a higher level of access to the fishery than an incidental permit. The Council concluded that the criteria selected represented the best balance between avoiding a race to fish and ensuring that the fishery can still achieve optimum yield.

#### **Longfin Squid Moratorium Permit Swap**

*Comment 4:* Lund's Fisheries supported the measure allowing vessel owners a one-time opportunity to "swap" longfin squid moratorium permits among vessels owned by the same entity. They stated that this would help optimize fishing operations.

*Response:* We agree, and implement that measure through this final rule.

#### **Incidental Longfin Squid Possession Limit**

*Comment 5:* Both Pew Charitable Trusts and Lund's Fisheries supported

reducing the longfin squid possession limit from 2,500 lb (1,134 kg) to 250 lb (113 kg) for open access longfin squid permits and for all longfin squid permits once the Trimester II quota is caught. Pew noted that such a reduction would prevent continued directed fishing once the Trimester II fishery is closed, mitigate the harmful effects of squid fishing during the spawning period, decrease the catch of pre-spawned squid, and limit the destruction of egg mops. Lund's also notes that it allows more animals to survive the summer fishery to benefit the fall and winter longfin squid fisheries.

*Response:* We agree, and implement the reduced longfin squid incidental possession limits through this final rule.

#### **Corrections and Clarifications to Existing Regulations**

*Comment 6:* Lund's Fisheries suggested that we retain reference to the Atlantic mackerel landing limit in metric tons instead of changing it to kilograms in § 648.4(a)(5)(iii)(B), as proposed.

*Response:* In response to public comment, we have retained reference to Atlantic mackerel landing limits in metric tons.

#### **Longfin Squid Trimester II Quota Allocation**

*Comment 7:* Pew Charitable Trusts stated that we should disapprove the Council's decision to take no-action on adjustments to the longfin squid Trimester II quota allocation and prohibit the roll-over of unused Trimester I longfin squid quota into Trimester II. Pew is concerned that excessive catch during Trimester II harms spawning squid and egg mops, which negatively impacts future squid recruitment. In conjunction with the reduced longfin squid incidental possession limits and the spawning closure described in Comment 1 above, it suggests that reductions in Trimester II fishing effort will benefit the ecosystem and other species by reducing the catch of longfin squid, which serves as an important forage species, and the bycatch of summer flounder, striped bass, and blueback herring.

*Response:* NMFS may only approve or disapprove measures proposed in a particular amendment. Because the Council did not adjust the longfin squid Trimester II quota under Amendment 20, there is nothing for us to disapprove in this action. The Council may consider such adjustments in a future action.

As adopted by the Council, Amendment 20 includes several

measures that reduce longfin squid fishing effort and better control landings during Trimester II, including revisions to longfin squid permits and adjustments to possession limits for both moratorium and incidental catch permits. The Council recognized that eliminating quota roll-over would additionally limit catch during Trimester II, and that excessive catch during Trimester II could negatively affect the species. However, current estimates of longfin squid biomass are well above target levels. The Council determined that existing quota allocations were sufficiently precautionary and that measures included in Amendment 20 were adequate to keep catch from exceeding the current Trimester II quota.

#### Changes From the Proposed Rule

The proposed rule suggested revising § 648.4(a)(5)(iii)(B) to reflect the Atlantic mackerel landing limit in kg instead of mt. Based on public comment, references to the Atlantic mackerel limits will continue to be listed in metric tons and will not be changed to kilograms.

In § 648.4(a)(5)(i)(A) and (B), the proposed rule included a 90-day delay before new longfin squid moratorium permits became effective or a vessel owner could apply for a permit, respectively. At the time, this was considered necessary to prepare to issue permits and process applications. This final rule delays the effective date of the new longfin squid moratorium permits until March 1, 2019, to align the issuance of the new permits with the annual permit renewal process. Therefore, this final rule revises § 648.4(a)(5)(i)(A) and (B) to indicate the Regional Administrator will begin issuing Tier 1 and 2 permits in February 2019 and to allow vessel owners to begin applying for such permits once this action becomes effective.

15 CFR part 902.1(b) is revised to include reference to the Office of Management and Budget (OMB) control number 0648–0679 for the regulations at 50 CFR 648.4 to reflect the new information collections associated with the longfin squid moratorium permit measures approved under Amendment 20 and implemented in this final rule.

#### Classification

The Administrator, Greater Atlantic Region, NMFS, determined that Amendment 20 is necessary for the conservation and management of the longfin squid and butterfly fisheries managed by the Mid-Atlantic Fishery Management Council and that it is consistent with the Magnuson-Stevens

Fishery Conservation and Management Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866. This rule is not an E.O. 13771 regulatory action because this rule is not significant under E.O. 12866.

This proposed rule does not contain policies with Federalism or takings implications as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

A Final Regulatory Flexibility Act (FRFA) analysis was prepared for this action. The FRFA incorporates the Initial Regulatory Flexibility Act (IRFA) analysis, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS responses to those comments, a summary of the analyses completed in the Amendment 20 EA, and this portion of the preamble. A summary of the IRFA was published in the proposed rule for this action and is not repeated here. A description of why this action was considered, the objectives of, and the legal basis for this rule is contained in Amendment 20 and in the preamble to the proposed and this final rule, and is not repeated here. All of the documents that constitute the FRFA are available from NMFS (see **ADDRESSES**).

#### *Summary of the Significant Issues Raised by Public Comments in Response to the IRFA*

A Summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made From the Proposed Rule as a Result of Such Comments

The public did not raise any significant issues in response to the IRFA, so no changes were made from the proposed rule.

#### *Description and Estimate of the Number of Small Entities to Which This Final Rule Would Apply*

For the purposes of the RFA analysis, the ownership entities (or firms) are defined as those entities or firms with common ownership personnel as listed on the permit application. Because of this, some vessels with Federal longfin squid/butterfish permits may be considered to be part of the same firm because they may have the same owners. The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy. For purposes of the

RFA, a business primarily engaged in commercial fishing activity is classified as a small business if it has combined annual gross receipts not in excess of \$11 million (NAICS 11411) for all its affiliated operations worldwide. A business primarily engaged in for-hire (charter/party) operations is characterized as annual gross receipts not in excess of \$7.5 million. To identify these small and large firms, vessel ownership data from the permit database were grouped according to common owners and sorted by size. The current ownership data set used for this analysis is based on calendar year 2016 (the most recent complete year available).

This action affects any vessel issued a valid Federal longfin squid/butterfish moratorium permit or an open access squid/butterfish incidental permit. According to the commercial database, 295 separate vessels were issued a longfin squid/butterfish moratorium permit in 2016. These vessels were owned by 222 entities, of which 214 were categorized as small business entities using the definition specified above. In 2016, 1,528 vessels were issued an open access squid/butterfish incidental permit. These vessels were owned by 1,114 entities, of which 1,105 were small business entities. In total, 1,319 small business entities may be affected by this rule out of a potential 1,336 entities (large and small) that may be affected by this action. Therefore, 99 percent of affected entities are categorized as small businesses.

Not all entities affected by this action landed fish for commercial sale in 2016. Nine small business entities issued a longfin squid/butterfish moratorium permit did not have any fishing revenue in 2016, while 274 small business entities issued an open access squid/butterfish incidental catch permit did not have any fishing revenue in 2016. Only 1,036 small business entities had fishing revenue in 2016, representing 79 percent of the small entities affected by this action.

#### *Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of This Final Rule*

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under control number 0648–0679. Public reporting burden and costs associated with these information collections, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection

of information, are estimated to average, as follows:

1. Application for a longfin squid moratorium permit, OMB# 0648–0679 (60 min/response and an annual cost of \$254.80 for postage);

2. Appeal of the denial of a longfin squid moratorium permit, OMB# 0648–0679 (120 min/response and an annual cost of \$226.87 for postage); and

3. Application for a longfin squid moratorium permit swap, OMB# 0648–0679 (5 min/response and an annual cost of \$1.63 for postage).

Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by email to *OIRA\_Submission@omb.eop.gov*, or fax to 202–395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

Description of Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes

For the longfin squid moratorium permit alternatives, measures implemented by this final rule (Alternative 1C in the EA) more effectively meet the objectives of this action to reduce latent effort in the fishery and avoid overharvest during Trimester II than other alternatives considered. By reducing the number of latent permits and overall fishing capacity consistent with the control date established by the Council, this action will help prevent future races to fish, excess longfin squid catch during Trimester II, and reduced fishing opportunities for permits that have been more dependent on longfin squid. This could improve economic returns for the most active participants in the fishery. Because this action also implements the Tier 2 permit, vessels that do not qualify for a Tier 1 permit are still able to continue to participate in the fishery, but at a lower level than those with higher landings during the qualification period. In addition, the permit “swap” provision allows an owner of multiple longfin squid moratorium permits to move permits among vessels he/she owns to optimize operations and maximize longfin squid revenue. Together, these measures represent the best balance of avoiding excessive landings and a race to fish by not

allowing too many vessels to target longfin squid, while ensuring that enough vessels remain in the fishery to achieve optimum yield and minimizing economic impacts to vessels that do not re-qualify for the Tier 1 permit.

The higher Tier 3 longfin squid moratorium permit landings qualification threshold implemented by this action (Alternative 3C) more effectively meets the objectives of this action than other alternatives considered. Approved measures limit vessels without a history of substantial landings to a smaller possession limit (250 lb or 113 kg per trip) and maintains the existing longfin squid incidental possession limit (2,500 lb or 1,134 kg) to minimize longfin squid discards for permits that had more longfin squid landings in recent years. These measures recognize historic landings, allowing vessels landing incidental amounts of longfin squid when targeting other fisheries to continue to do so, maintaining longfin squid as a source of fishing revenue on those trips. Reducing the number of vessels that can land 2,500 lb (1,134 kg) of longfin squid also reduces overall fishing effort, particularly when longfin squid are nearshore and more available to the fishery during Trimester II. This could prevent overfishing and preserve more biomass for future seasons, increasing future fishing revenues, particularly during Trimester III and Trimester I of the following year.

Reducing the longfin squid possession limit to 250 (113 kg) per trip once the Trimester II quota is caught will help prevent excessive longfin squid catch and reduce negative impacts to longfin squid and egg mops during the Trimester II spawning season. Unlike the other alternatives, the measures implemented by this action (Alternative 5B) provide additional control over longfin squid catch that will essentially eliminate incentives to target longfin squid once the Trimester II directed fishery is closed. Excessive landings during Trimester II could negatively affect squid productivity and have been shown to reduce longfin squid catch rates in subsequent seasons, which also reduces future fishing revenues. These measures should help reduce fishing effort during the spawning season, which could prolong longfin squid availability into Trimester III and increase future longfin squid productivity. In doing so, this action may produce higher future economic returns than the other alternatives considered.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group

of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as small entity compliance guide (the guide) was prepared. Copies of the guide (*i.e.*, permit holder letter) will be sent to all entities issued longfin squid and butterfish permits. The guide and this final rule will be available upon request from the Regional Administrator (see **ADDRESSES**) and online at <https://www.greateratlantic.fisheries.noaa.gov/sustainable/species/msb/index.html>.

## List of Subjects

### 15 CFR Part 902

Reporting and recordkeeping requirements.

### 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 10, 2018.

**Alan D. Risenhoover,**

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

For the reasons stated in the preamble, 15 CFR part 902 and 50 CFR part 648 are amended as follows:

## Title 15—Commerce and Foreign Trade

### PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

■ 1. The authority citation for part 902 continues to read as follows:

**Authority:** 44 U.S.C. 3501 *et seq.*

■ 2. In § 902.1, in the table in paragraph (b), under the entry “50 CFR,” revise the entry for “648.4” to read as follows:

#### § 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

	*	*	*	*	*
(b) * * *					
CFR part or section where the information collection requirement is located			Current OMB control number (all numbers begin with 0648—)		
<hr/>					
	*	*	*	*	*
50 CFR:					
	*	*	*	*	*
648.4 .....			—0202, —0212, —0529, and —0679		

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
* * *	* *
* * *	* *

## Title 50—Wildlife and Fisheries

### PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

■ 4. In § 648.2, revise the definition of “Atlantic Mackerel, Squid, and Butterfish Monitoring Committee” and add definitions for “Calendar day,” “Directed fishery,” and “Incidental catch” in alphabetical order to read as follows:

#### § 648.2 Definitions.

\* \* \*

*Atlantic Mackerel, Squid, and Butterfish Monitoring Committee* means the committee made up of staff representatives of the MAFMC and the NEFMC, and the Greater Atlantic Regional Fisheries Office and NEFSC of NMFS. The MAFMC Executive Director or a designee chairs the Committee.

\* \* \*

*Calendar day*, with respect to the squid and butterfish fisheries, means the 24-hr period beginning at 0001 hours and ending at 2400 hours,

\* \* \*

*Directed fishery*, with respect to the longfin squid, *Illex* squid, and butterfish fisheries, means commercial fishery operations in which more than an incidental catch of each species, as defined in this section, is retained by a vessel.

\* \* \*

*Incidental catch*, with respect to the longfin squid, *Illex* squid, and butterfish fisheries, means less than 250 lb (113 kg) of longfin squid, 10,000 lb (4,536 kg) of *Illex* squid, or 600 lb (272 kg) of butterfish retained on board the vessel.

\* \* \*

■ 5. In § 648.4, revise paragraph (a)(5) to read as follows:

#### § 648.4 Vessel permits.

(a) \* \* \*

(5) *Mackerel, squid, and butterfish vessels*. Any vessel of the United States, including party and charter vessels, must have been issued and carry on board a valid vessel permit to fish for, possess, or land Atlantic mackerel, squid, or butterfish in or from the EEZ.

(i) *Longfin squid moratorium permits*—(A) *Eligibility*. To be eligible to apply for a moratorium permit to fish for and retain longfin squid in excess of the incidental catch allowance in paragraph (a)(5)(vi) of this section in the EEZ, a vessel must have been issued a longfin squid moratorium permit for the preceding year, be replacing a vessel that was issued a moratorium permit for the preceding year, or be replacing a vessel that was issued a confirmation of permit history. Beginning in fishing year 2018, a vessel may be eligible for and could be issued a Tier 1, Tier 2, or Tier 3 longfin squid moratorium permit if the vessel and associated fishing history meet the criteria described under paragraphs (a)(5)(i)(A)(1) through (3) of this section.

(1) *Tier 1 longfin squid moratorium permit*. Beginning in February 2019, the Regional Administrator shall automatically issue a Tier 1 longfin squid moratorium permit to any vessel that is issued a longfin squid/butterfish moratorium permit or eligible to be issued such a permit held in confirmation of permit history (CPH) during calendar year 2018 that meets the eligibility criteria in this paragraph (a)(5)(i)(A)(1). To be eligible for a Tier 1 permit, a vessel must have been issued a valid longfin squid/butterfish moratorium permit and landed more than 10,000 lb (4,536 kg) of longfin squid in at least one calendar year between January 1, 1997, and December 31, 2013. Fishing history, including for a permit held in confirmation of permit history, can be used by a vessel to qualify for and be issued a Tier 1 longfin squid moratorium permit, provided the Regional Administrator has determined that the fishing and permit history of such vessel has been lawfully retained by the applicant. Landings data used in this qualification must be verified by dealer reports submitted to NMFS. A vessel that was not automatically issued a Tier 1 longfin squid moratorium permit may apply for such a permit in accordance with paragraph (a)(5)(i)(B) of this section.

(2) *Tier 2 longfin squid moratorium permit*. Beginning in February 2019, the Regional Administrator shall automatically issue a Tier 2 longfin squid moratorium permit to any vessel that is issued a longfin squid/butterfish moratorium permit or eligible to be issued such a permit held in CPH during fishing year 2018 that does not qualify for a Tier 1 longfin squid moratorium permit, as described in paragraph (a)(5)(i)(A)(1) of this section.

(3) *Tier 3 longfin squid moratorium permit*. To be issued a Tier 3 permit, a vessel must have been issued an open

access squid/butterfish permit and landed more than 5,000 lb (2,268 kg) of longfin squid in at least one calendar year between January 1, 1997, and December 31, 2013. Landings data used in this qualification must be verified by dealer reports submitted to NMFS.

(B) *Application/renewal restriction*. See paragraph (a)(1)(i)(B) of this section. Unless automatically issued a Tier 1 or 2 longfin squid moratorium permit in accordance with paragraphs (a)(5)(i)(A)(1) or (2) of this section, a vessel owner may submit an initial application for a longfin squid moratorium permit described in paragraph (a)(5)(i)(A)(1) through (3) of this section. The initial application must be received by NMFS or postmarked no later than February 29, 2020. An initial application for a longfin squid moratorium permit that is not postmarked before February 29, 2020, will not be processed because of this regulatory restriction, and will be returned to the sender with a letter explaining the reason for its return.

(C) *Qualification restriction*. See paragraph (a)(1)(i)(C) of this section. Longfin squid landings history generated by separate owners of a single vessel at different times during the qualification period for a longfin squid moratorium permit may be used to qualify more than one vessel, provided that each owner applying for such a permit demonstrates that he/she created distinct fishing histories, that such histories have been retained, and if the vessel was sold, that each applicant's eligibility and fishing history is distinct.

(D) *Change in ownership*. See paragraph (a)(1)(i)(D) of this section.

(E) *Replacement vessels*. With the exception of a vessel issued a longfin squid Tier 3 moratorium permit, to be eligible for a longfin squid moratorium permit, a replacement vessel must meet the criteria specified in paragraph (a)(1)(i)(E) of this section.

(F) *Upgraded vessel*. With the exception of a vessel issued a longfin squid Tier 3 moratorium permit, the upgrade provisions in paragraph (a)(1)(i)(F) of this section apply to a vessel issued a longfin squid moratorium permit.

(G) *Consolidation restriction*. See paragraph (a)(1)(i)(G) of this section.

(H) *Vessel baseline specifications*. With the exception of a vessel issued a longfin squid Tier 3 moratorium permit, the vessel baseline specification measures specified in paragraph (a)(3)(i)(H) of this section apply to a vessel issued a longfin squid moratorium permit.

(I) *One-time longfin squid moratorium permit swap*. An entity that owns



multiple vessels issued longfin squid/butterfish moratorium permits as of May 26, 2017, has a one-time opportunity to swap one Tier 1 longfin squid moratorium permit issued to one of its vessels with a longfin squid Tier 2 moratorium permit issued to another of its vessels. No other fishery permits issued under this section may be transferred pursuant to this paragraph (a)(5)(i)(I). To be eligible for the one-time longfin squid moratorium permit swap, the following conditions must be met:

(1) An application to swap longfin squid moratorium permits must be received by the Regional Administrator within one year of the Regional Administrator's final decision on the issuance of the longfin squid Tier 1 or Tier 2 moratorium permits to be exchanged;

(2) At the time of the application, the owner of record for both vessels and permits involved in the permit swap must be identical to the owner of record of the same two vessels issued the associated longfin squid/butterfish moratorium permits as of May 26, 2017;

(3) The length overall of the vessel upon which a longfin squid moratorium permit would be placed may not exceed the length overall associated with that individual permit's vessel baseline specifications by more than 10 percent; and

(4) The horsepower of the vessel upon which a longfin squid moratorium permit would be placed may not exceed the horsepower associated with that individual permit's vessel baseline specifications by more than 20 percent.

(J) *Confirmation of permit history.* See paragraph (a)(1)(i)(J) of this section.

(K) *Abandonment or voluntary relinquishment of permits.* See paragraph (a)(1)(i)(K) of this section.

(L) *Restriction on permit splitting.* See paragraph (a)(1)(i)(L) of this section.

(M) *Appeal of permit denial—(1) Eligibility.* Any applicant eligible to apply for a longfin squid moratorium permit who is denied such permit by the Regional Administrator may appeal the denial to the Regional Administrator within 30 days of the notice of denial.

(2) *Appeal review.* Review of the Regional Administrator's decisions on longfin squid moratorium permit issuance will be conducted by the NOAA Fisheries National Appeals Office pursuant to the procedures set forth in 15 CFR part 906, unless otherwise modified by the procedures described here. The National Appeals Office shall make findings and submit its decision to the Regional Administrator and the applicant. The Regional Administrator will review the

National Appeals Office decision and make a final decision regarding any appeal in accordance with 15 CFR 906.17. The Regional Administrator's decision is the final decision of the Department of Commerce.

(i) *Appeal request.* An appeal of the denial of an initial permit application must be made in writing and submitted to and received by the Regional Administrator or postmarked no later than 30 days after the denial of an initial longfin squid moratorium permit application. Upon receipt, the Regional Administrator shall forward each appeal request to the National Appeals Office. Appeals must be based on the grounds that the information used by the Regional Administrator in denying the original permit application was incorrect. Items subject to appeal include, but are not limited to, the accuracy of the amount of landings, the correct assignment of landings to a vessel and/or permit holder, and the issuance of a permit to a particular entity. The appeal request must state the specific grounds for the appeal, and include information to support the appeal. An appellant may request a hearing by including a concise statement raising genuine and substantial issues of a material fact or law that cannot be resolved based on the documentary evidence alone. An appellant may also request a letter of authorization (LOA), as described in paragraph (a)(5)(i)(M)(3) of this section, to continue to fish during an appeal. If the appeal of the denial of the permit application is not made within 30 days, the denial of the permit application shall constitute the final decision of the Department of Commerce. The appeal will not be reviewed without submission of information in support of the appeal.

(ii) *Reconsideration.* Should the National Appeals Office deny an appeal request submitted according to paragraph (a)(5)(i)(M)(2)(i) of this section, the applicant may request a reconsideration of the appeal by the National Appeals Office. A reconsideration request must be made in writing and submitted to the National Appeals Office within 10 days of that office's decision on the appeal, as instructed by the National Appeals Office.

(3) *Status of vessels pending appeal.* A vessel denied a longfin squid moratorium permit may fish for longfin squid while the decision on the appeal is pending within NMFS, provided that the denial has been appealed, the appeal is pending, and the vessel has on board an LOA from the Regional Administrator authorizing the vessel to

fish under the longfin squid moratorium permit category for which the applicant has submitted an appeal. A request for an LOA must be made when submitting an appeal of the denial of the permit application. The Regional Administrator will issue such a letter for the pending period of any appeal. The LOA must be carried on board the vessel. If the appeal is finally denied, the Regional Administrator shall send a notice of final denial to the vessel owner; the authorizing letter becomes invalid 5 days after the receipt of the notice of denial, but no later than 10 days from the date of the letter of denial.

(ii) *Illex squid and butterfish moratorium permits—(A) Eligibility.* To be eligible to apply for a moratorium permit to fish for and retain *Illex* squid or butterfish in excess of the incidental catch allowance in paragraph (a)(5)(iv) of this section in the EEZ, a vessel must have been issued an *Illex* squid or butterfish moratorium permit for the preceding year, be replacing a vessel that was issued a moratorium permit for the preceding year, or be replacing a vessel that was issued a confirmation of permit history. Beginning in February 2019, a vessel that was previously issued a longfin squid/butterfish moratorium permit during fishing year 2018 shall be automatically issued a separate butterfish moratorium permit.

(B) *Application/renewal restriction.* See paragraph (a)(1)(i)(B) of this section.

(C) *Qualification restriction.* See paragraph (a)(1)(i)(C) of this section.

(D) *Change in ownership.* See paragraph (a)(1)(i)(D) of this section.

(E) *Replacement vessels.* See paragraph (a)(1)(i)(E) of this section.

(F) *Upgraded vessel.* See paragraph (a)(1)(i)(F) of this section.

(G) *Consolidation restriction.* See paragraph (a)(1)(i)(G) of this section.

(H) *Vessel baseline specifications.* See paragraph (a)(3)(i)(H) of this section.

(I) [Reserved]

(J) *Confirmation of permit history.* See paragraph (a)(1)(i)(J) of this section.

(K) *Abandonment or voluntary relinquishment of permits.* See paragraph (a)(1)(i)(K) of this section.

(L) *Restriction on permit splitting.* See paragraph (a)(1)(i)(L) of this section.

(iii) *Limited access Atlantic mackerel permits.* (A) *Vessel size restriction.* A vessel of the United States is eligible for and may be issued an Atlantic mackerel permit to fish for, possess, or land Atlantic mackerel in or from the EEZ, except for any vessel that is greater than or equal to 165 ft (50.3 m) in length overall (LOA), or greater than 750 gross registered tons (680.4 mt), or the vessel's total main propulsion machinery is greater than 3,000 horsepower. Vessels

that exceed the size or horsepower restrictions may seek to obtain an at-sea processing permit specified in § 648.6(a)(2)(i).

(B) *Limited access mackerel permits.* A vessel of the United States that fishes for, possesses, or lands more than 20,000 lb (7.46 mt) of mackerel per trip, except vessels that fish exclusively in state waters for mackerel, must have been issued and carry on board one of the limited access mackerel permits described in paragraphs (a)(5)(iii)(B)(1) through (3) of this section, including both vessels engaged in pair trawl operations.

(1) *Tier 1 Limited Access Mackerel Permit.* A vessel may fish for, possess, and land mackerel not subject to a trip limit, provided the vessel qualifies for and has been issued this permit, subject to all other regulations of this part.

(2) *Tier 2 Limited Access Mackerel Permit.* A vessel may fish for, possess, and land up to 135,000 lb (50 mt) of mackerel per trip, provided the vessel qualifies for and has been issued this permit, subject to all other regulations of this part.

(3) *Tier 3 Limited Access Mackerel Permit.* A vessel may fish for, possess, and land up to 100,000 lb (37.3 mt) of mackerel per trip, provided the vessel qualifies for and has been issued this permit, subject to all other regulations of this part.

(C) *Eligibility criteria for mackerel permits.* To be eligible to apply for a Tier 1, Tier 2, or Tier 3 limited access mackerel permit to fish for and retain Atlantic mackerel in excess of the incidental catch allowance in paragraph (a)(5)(vi) of this section in the EEZ, a vessel must have been issued a Tier 1, Tier 2, or Tier 3 limited access mackerel permit, as applicable, for the preceding year, be replacing a vessel that was issued a limited access permit for the preceding year, or be replacing a vessel that was issued a confirmation of permit history.

(D) *Application/renewal restrictions.* See paragraph (a)(1)(i)(B) of this section.

(E) *Qualification restrictions.* See paragraph (a)(1)(i)(C) of this section.

(F) *Change of ownership.* See paragraph (a)(1)(i)(D) of this section.

(G) *Replacement vessels.* See paragraph (a)(1)(i)(E) of this section.

(H) *Vessel baseline specification.* (1) In addition to the baseline specifications specified in paragraph (a)(1)(i)(H) of this section, the volumetric fish hold capacity of a vessel at the time it was initially issued a Tier 1 or Tier 2 limited access mackerel permit will be considered a baseline specification. The fish hold capacity measurement must be certified by one of the following

qualified individuals or entities: an individual credentialed as a Certified Marine Surveyor with a fishing specialty by the National Association of Marine Surveyors (NAMS); an individual credentialed as an Accredited Marine Surveyor with a fishing specialty by the Society of Accredited Marine Surveyors (SAMS); employees or agents of a classification society approved by the Coast Guard pursuant to 46 U.S.C. 3316(c); the Maine State Sealer of Weights and Measures; a professionally-licensed and/or registered Marine Engineer; or a Naval Architect with a professional engineer license. The fish hold capacity measurement submitted to NMFS as required in this paragraph (a)(5)(iii)(H)(1) must include a signed certification by the individual or entity that completed the measurement, specifying how they meet the definition of a qualified individual or entity.

(2) If a mackerel CPH is initially issued, the vessel that provided the CPH eligibility establishes the size baseline against which future vessel size limitations shall be evaluated, unless the applicant has a vessel under contract prior to the submission of the mackerel limited access application. If the vessel that established the CPH is less than 20 ft (6.09 m) in length overall, then the baseline specifications associated with other limited access permits in the CPH suite will be used to establish the mackerel baseline specifications. If the vessel that established the CPH is less than 20 ft (6.09 m) in length overall, the limited access mackerel eligibility was established on another vessel, and there are no other limited access permits in the CPH suite, then the applicant must submit valid documentation of the baseline specifications of the vessel that established the eligibility. The hold capacity baseline for such vessels will be the hold capacity of the first replacement vessel after the permits are removed from CPH. Hold capacity for the replacement vessel must be measured pursuant to paragraph (a)(5)(iii)(H)(1) of this section.

(I) *Upgraded vessel.* See paragraph (a)(1)(i)(F) of this section. In addition, for Tier 1 and Tier 2 limited access mackerel permits, the replacement vessel's volumetric fish hold capacity may not exceed by more than 10 percent the volumetric fish hold capacity of the vessel's baseline specifications. The modified fish hold, or the fish hold of the replacement vessel, must be resurveyed by a surveyor (accredited as in paragraph (a)(5)(iii)(H) of this section) unless the replacement vessel already had an appropriate certification.

(J) *Consolidation restriction.* See paragraph (a)(1)(i)(G) of this section.

(K) *Confirmation of permit history.* See paragraph (a)(1)(i)(J) of this section.

(L) *Abandonment or voluntary relinquishment of permits.* See paragraph (a)(1)(i)(K) of this section.

(iv) *Atlantic mackerel incidental catch permits.* Any vessel of the United States may obtain a permit to fish for or retain up to 20,000 lb (9,072 kg) of Atlantic mackerel as an incidental catch in another directed fishery, provided that the vessel does not exceed the size restrictions specified in paragraph (a)(5)(iii)(A) of this section. The incidental catch allowance may be revised by the Regional Administrator based upon a recommendation by the Council following the procedure set forth in § 648.21.

(v) *Party and charter boat permits.* The owner of any party or charter boat must obtain a permit to fish for, possess, or retain in or from the EEZ mackerel, squid, or butterfish while carrying passengers for hire.

(vi) *Squid/butterfish incidental catch permit.* Any vessel of the United States may obtain a permit to fish for or retain up to 250 lb (113 kg) of longfin squid, 600 lb (272 kg) of butterfish, or up to 10,000 lb (4,536 kg) of *Illex* squid, as an incidental catch in another directed fishery. The incidental catch allowance may be revised by the Regional Administrator based upon a recommendation by the Council following the procedure set forth in § 648.22.

\* \* \* \* \*

■ 6. In § 648.7, revise paragraphs (a)(1), (b)(3)(iii), and (f)(2)(i) to read as follows:

**§ 648.7 Recordkeeping and reporting requirements.**

(a) \* \* \*

(1) Federally permitted dealers, and any individual acting in the capacity of a dealer, must submit to the Regional Administrator or to the official designee a detailed report of all fish purchased or received for a commercial purpose, other than solely for transport on land, within the time period specified in paragraph (f) of this section, by one of the available electronic reporting mechanisms approved by NMFS, unless otherwise directed by the Regional Administrator. The dealer reporting requirements specified in this paragraph (a)(1) for dealers purchasing or receiving for a commercial purpose Atlantic chub mackerel are effective through December 31, 2020. The following information, and any other information required by the Regional Administrator, must be provided in each report:

(i) *Required information.* All dealers issued a dealer permit under this part must provide: Dealer name; dealer permit number; name and permit number or name and hull number (USCG documentation number or state registration number, whichever is applicable) of vessel(s) from which fish are purchased or received; trip identifier for each trip from which fish are purchased or received from a commercial fishing vessel permitted under this part; date(s) of purchases and receipts; units of measure and amount by species (by market category, if applicable); price per unit by species (by market category, if applicable) or total value by species (by market category, if applicable); port landed; cage tag numbers for surfclams and ocean quahogs, if applicable; disposition of the seafood product; and any other information deemed necessary by the Regional Administrator. If no fish are purchased or received during a reporting week, a report so stating must be submitted.

(ii) *Exceptions.* The following exceptions apply to reporting requirements for dealers permitted under this part:

(A) Inshore Exempted Species, as defined in § 648.2, are not required to be reported under this part;

(B) When purchasing or receiving fish from a vessel landing in a port located outside of the Greater Atlantic Region (Maine, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Maryland, Delaware, Virginia and North Carolina), only purchases or receipts of species managed by the Greater Atlantic Region under this part, and American lobster, managed under part 697 of this chapter, must be reported. Other reporting requirements may apply to those species not managed by the Northeast Region, which are not affected by this provision; and

(C) Dealers issued a permit for Atlantic bluefin tuna under part 635 of this chapter are not required to report their purchases or receipts of Atlantic bluefin tuna under this part. Other reporting requirements, as specified in § 635.5 of this chapter, apply to the receipt of Atlantic bluefin tuna.

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(iii) *Longfin squid moratorium permit owners or operators.* The owner or operator of a vessel issued a longfin squid moratorium permit must report catch (retained and discarded) of longfin squid daily via VMS, unless exempted by the Regional Administrator. The

report must include at least the following information, and any other information required by the Regional Administrator: Fishing Vessel Trip Report serial number; month, day, and year longfin squid was caught; total pounds longfin squid retained and total pounds of all fish retained. Daily longfin squid VMS catch reports must be submitted in 24-hr intervals for each day and must be submitted by 0900 hr on the following day. Reports are required even if longfin squid caught that day have not yet been landed. This report does not exempt the owner or operator from other applicable reporting requirements of this section.

\* \* \* \* \*

(f) \* \* \*

(2) \* \* \*

(i) For any vessel not issued a NE multispecies; Atlantic herring permit; or any Atlantic mackerel, longfin squid, *Illex* squid, or butterfish permit; fishing vessel log reports, required by paragraph (b)(1)(i) of this section, must be postmarked or received by NMFS within 15 days after the end of the reporting month. For any vessel issued a NE multispecies permit; Atlantic herring permit; or any Atlantic mackerel, longfin squid, *Illex* squid, or butterfish permit; fishing vessel log reports must be postmarked or received by midnight of the first Tuesday following the end of the reporting week. For the purposes of this paragraph (f)(2)(i), the date when fish are offloaded will establish the reporting week or month the VTR must be submitted to NMFS, as appropriate.

\* \* \* \* \*

#### ■ 7. In § 648.10:

■ a. Revise paragraphs (b)(9) through (11);

■ b. Add paragraph (b)(12); and

■ c. Revise paragraphs (e)(5)(i), (o), and (p).

The revisions and addition read as follows:

#### § 648.10 VMS and DAS requirements for vessel owners/operators.

\* \* \* \* \*

(b) \* \* \*

(9) A vessel issued a Tier 1, Tier 2, or Tier 3 limited access Atlantic mackerel permit;

(10) A vessel issued a Tier 1 or Tier 2 longfin squid moratorium permit;

(11) A vessel issued an *Illex* squid moratorium permit; or

(12) A vessel issued a butterfish moratorium permit.

\* \* \* \* \*

(e) \* \* \*

(5) \* \* \*

(i) A vessel subject to the VMS requirements of § 648.9 and paragraphs

(b) through (d) of this section that has crossed the VMS Demarcation Line under paragraph (a) of this section is deemed to be fishing under the DAS program, the Access Area Program, the LAGC IFQ or NGOM scallop fishery, or other fishery requiring the operation of VMS as applicable, unless prior to leaving port, the vessel's owner or authorized representative declares the vessel out of the scallop, NE multispecies, monkfish, or any other fishery, as applicable, for a specific time period. NMFS must be notified by transmitting the appropriate VMS code through the VMS, or unless the vessel's owner or authorized representative declares the vessel will be fishing in the Eastern U.S./Canada Area, as described in § 648.85(a)(3)(ii), under the provisions of that program.

\* \* \* \* \*

(o) *Longfin squid VMS notification requirement.* A vessel issued a Tier 1 or Tier 2 longfin squid moratorium permit intending to harvest, possess, or land more than 2,500 lb (1.13 mt) of longfin squid on that trip must notify NMFS by declaring a longfin squid trip before leaving port at the start of each trip.

(p) *Illex squid VMS notification requirement.* A vessel issued an *Illex* squid moratorium permit intending to harvest, possess, or land 10,000 lb (4,536 kg) or more of *Illex* squid on that trip must notify NMFS by declaring an *Illex* squid trip before leaving port at the start of each trip.

■ 8. In § 648.11, revise the introductory text in paragraph (n)(2) and paragraphs (n)(3)(i) and (ii) to read as follows:

#### § 648.11 At-sea sea sampler/observer coverage.

\* \* \* \* \*

(n) \* \* \*

(2) *Sampling requirements for limited access Atlantic mackerel or Tier 1 or 2 longfin squid, or butterfish moratorium permit holders.* In addition to the requirements in paragraphs (d)(1) through (7) of this section, an owner or operator of a vessel issued a limited access Atlantic mackerel or a longfin squid or butterfish moratorium permit on which a NMFS-approved observer is embarked must provide observers:

\* \* \* \* \*

(3) \* \* \*

(i) No vessel issued a limited access Atlantic mackerel permit or a longfin squid or butterfish moratorium permit may slip catch, as defined at § 648.2, except in the following circumstances:

(A) The vessel operator has determined, and the preponderance of available evidence indicates that, there is a compelling safety reason; or

(B) A mechanical failure, including gear damage, precludes bringing some or all of the catch on board the vessel for sampling and inspection; or

(C) The vessel operator determines that pumping becomes impossible as a result of spiny dogfish clogging the pump intake. The vessel operator shall take reasonable measures, such as strapping and splitting the net, to remove all fish that can be pumped from the net prior to release.

(ii) If a vessel issued any limited access Atlantic mackerel permit slips catch, the vessel operator must report the slippage event on the Atlantic mackerel and longfin squid daily VMS catch report and indicate the reason for slipping catch. Additionally, for a vessel issued a limited Atlantic mackerel permit or a longfin squid or butterflyfish moratorium permit, the vessel operator must complete and sign a Released Catch Affidavit detailing: The vessel name and permit number; the VTR serial number; where, when, and the reason for slipping catch; the estimated weight of each species brought on board or slipped on that tow. A completed affidavit must be submitted to NMFS within 48 hr of the end of the trip.

\* \* \* \* \*

■ 9. In § 648.13, revise paragraph (a) to read as follows:

**§ 648.13 Transfers at sea.**

(a) Vessels issued a longfin squid, butterflyfish, or *Illex* squid moratorium permit and vessels issued a squid/butterflyfish incidental catch permit may transfer or attempt to transfer or receive longfin squid, *Illex* squid, or butterflyfish only if authorized in writing by the Regional Administrator through the issuance of a letter of authorization (LOA).

\* \* \* \* \*

■ 10. In § 648.14:

■ a. Revise paragraphs (g)(1)(i), (g)(1)(ii)(B), (g)(2)(i), (g)(2)(ii)(A), (D) and (F);

■ b. Add paragraph (g)(2)(ii)(H); and

■ c. Revise paragraphs (g)(2)(iii)(A), the heading of paragraph (g)(2)(v), and paragraphs (g)(2)(v)(A) and (g)(2)(vi).

The revisions and addition read as follows:

**§ 648.14 Prohibitions.**

(g) \* \* \*

(1) \* \* \*

(i) *Possession and landing.* Take and retain, possess, or land more Atlantic mackerel, squid or butterflyfish than specified under, or after the effective date of, a notification issued under §§ 648.22 or 648.24(d).

(ii) \* \* \*

(B) Transfer longfin squid, *Illex* squid, or butterflyfish within the EEZ, unless the vessels participating in the transfer have been issued the appropriate LOA from the Regional Administrator along with a valid longfin squid, butterflyfish, or *Illex* squid moratorium permit and are transferring species for which the vessels are permitted, or a valid squid/butterflyfish incidental catch permit.

\* \* \* \* \*

(2) \* \* \*

(i) *General requirement.* Fail to comply with any measures implemented pursuant to subpart B of this part.

(ii) \* \* \*

(A) Possess more than the incidental catch allowance of longfin squid, unless issued a longfin squid moratorium permit.

\* \* \* \* \*

(D) Take and retain, possess, or land mackerel, squid, or butterflyfish in excess of a possession limit specified in § 648.26.

\* \* \* \* \*

(F) Take and retain, possess, or land mackerel after a total closure specified under § 648.24(b)(1).

\* \* \* \* \*

(H) Possess more than the incidental catch allowance of butterflyfish, unless issued a butterflyfish moratorium permit.

(iii) \* \* \*

(A) Fish with or possess nets or netting that do not meet the gear requirements for Atlantic mackerel, longfin squid, *Illex* squid, or butterflyfish specified in § 648.23(a); or that are modified, obstructed, or constricted, if subject to the minimum mesh requirements, unless the nets or netting are stowed and not available for immediate use as defined in § 648.2 or the vessel is fishing under an exemption specified in § 648.23(a)(5).

\* \* \* \* \*

(v) *VMS reporting requirements in the directed Atlantic mackerel longfin squid, and *Illex* squid fisheries.* (A) Fail to declare via VMS into the directed mackerel, longfin squid, or *Illex* squid fisheries by entering the fishery code prior to leaving port at the start of each trip if the vessel will harvest, possess, or land more than an incidental catch of Atlantic mackerel, longfin squid, or *Illex* squid and is issued a Limited Access Atlantic mackerel permit, Tier 1 or Tier 2 longfin squid moratorium permit, or *Illex* squid moratorium permit.

\* \* \* \* \*

(vi) Slip catch, as defined at § 648.2, unless for one of the reasons specified at § 648.11(n)(3)(i) if issued a limited access Atlantic mackerel permit, or a

longfin squid or a butterflyfish moratorium permit.

\* \* \* \* \*

■ 11. In § 648.22, revise paragraphs (a), (b)(1)(i)(B), (c)(3), and (c)(6) to read as follows:

**§ 648.22 Atlantic mackerel, squid, and butterflyfish specifications.**

(a) *Initial recommended annual specifications.* The Atlantic Mackerel, Squid, and Butterflyfish Monitoring Committee (Monitoring Committee) shall meet annually to develop and recommend the following specifications for consideration by the Squid, Mackerel, and Butterflyfish Committee of the MAFMC:

(1) *Illex squid*—Initial OY (IOY), including Research Set-Aside (RSA), domestic annual harvest (DAH), and domestic annual processing (DAP) for *Illex* squid, which, subject to annual review, may be specified for a period of up to 3 years;

(2) *Butterfish*—ACL; ACT including RSA, DAH, DAP; bycatch level of the total allowable level of foreign fishing (TALFF), if any; and butterflyfish mortality cap for the longfin squid fishery for butterflyfish; which, subject to annual review, may be specified for a period of up to 3 years;

(3) *Atlantic mackerel*—ACL; commercial ACT, including RSA, DAH, mackerel Tier 3 allocation (up to 7 percent of the DAH), DAP; joint venture processing (JVP) if any; TALFF, if any; and recreational ACT, including RSA for mackerel; which, subject to annual review, may be specified for a period of up to 3 years. The Monitoring Committee may also recommend that certain ratios of TALFF, if any, for mackerel to purchases of domestic harvested fish and/or domestic processed fish be established in relation to the initial annual amounts.

(4) *Longfin squid*—

(i) IOY, including RSA, DAH, and DAP for longfin squid, which, subject to annual review, may be specified for a period of up to 3 years; and

(ii) Inseason adjustment, upward or downward, to the specifications for longfin squid, as specified in paragraph (e) of this section.

(b) \* \* \*

(1) \* \* \*

(i) \* \* \*

(B) *Illex squid*—Catch associated with a fishing mortality rate of  $F_{MSY}$ .

\* \* \* \* \*

(c) \* \* \*

(3) The amount of longfin squid, *Illex* squid, and butterflyfish that may be retained and landed by vessels issued the incidental catch permit specified in

§ 648.4(a)(5)(vi), and the amount of mackerel that may be retained, possessed and landed by any of the limited access mackerel permits described at § 648.4(a)(5)(iii) and the incidental mackerel permit at § 648.4(a)(5)(iv).

\* \* \* \* \*

(6) Commercial seasonal quotas/closures for longfin squid and *Illex* squid, and allocation for the Tier 3 Limited Access Mackerel permit.

\* \* \* \* \*

■ 12. In § 648.24, revise paragraph (c)(1) to read as follows:

**§ 648.24 Fishery closures and accountability measures.**

\* \* \* \* \*

(c) \* \* \*

(1) *Directed butterfly fishery closure.* When the butterfly catch reaches the butterfly closure threshold as determined in the annual specifications, NMFS shall implement a 5,000 lb (2,268 kg) possession limit for vessels issued a butterfly moratorium permit that are fishing with a minimum mesh size of 3 inches (76 mm). When NMFS projects that the butterfly catch has reached the butterfly DAH, as determined in the annual specifications, NMFS shall implement a 600 lb (272 kg) possession limit for all vessels issued a longfin squid or butterfly moratorium permit, or a squid/butterfish incidental catch permit.

\* \* \* \* \*

■ 13. In § 648.25, revise paragraph (a)(4)(i) to read as follows:

**§ 648.25 Atlantic Mackerel, squid, and butterfly framework adjustments to management measures.**

(a) \* \* \*

(4) \* \* \*

(i) If NMFS concurs with the MAFMC's recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors specified in paragraph (a)(3) of this section, the measures will be issued as a final rule in the **Federal Register**.

\* \* \* \* \*

■ 14. In § 648.26, revise paragraphs (b) through (d) to read as follows:

**§ 648.26 Mackerel, squid, and butterfly possession restrictions.**

\* \* \* \* \*

(b) *Longfin squid*—(1) *Directed fishery.* A vessel must be issued a valid longfin squid moratorium permit to fish for, possess, or land more than 250 lb (113 kg) of longfin squid from or in the EEZ per trip. Unless the directed fishery

is closed pursuant to paragraph § 648.24(a)(1), the following longfin squid possession limits apply:

(i) *Tier 1 moratorium permits.* A vessel issued a Tier 1 longfin squid moratorium permit may possess an unlimited amount of longfin squid per trip.

(ii) *Tier 2 moratorium permits.* A vessel issued a Tier 2 longfin squid moratorium permit may not fish for, possess, or land more than 5,000 lb (2,268 kg) of longfin squid per trip, and may only land longfin squid once on any calendar day.

(iii) *Tier 3 moratorium permits.* A vessel issued a Tier 3 longfin squid moratorium permit may not fish for, possess, or land more than 2,500 lb (1,134 kg) of longfin squid per trip, and may only land longfin squid once on any calendar day.

(2) *Incidental fishery.* (i) A vessel issued an open access squid/butterfish incidental catch permit may not fish for, possess, or land more than 250 lb (113 kg) of longfin squid from or in the EEZ per trip, and may only land longfin squid once on any calendar day.

(ii) During a closure of the directed longfin squid fishery in either Trimester I or III pursuant to paragraph § 648.24(a)(1), a vessel may not fish for, possess, or land more than 2,500 lb (1,134 kg) of longfin squid at any time per trip, and may only land longfin squid once on any calendar day.

(iii) Unless otherwise specified in paragraph (b)(2)(iv) of this section, during a closure of the directed longfin squid fishery in Trimester II pursuant to § 648.24(a)(1), a vessel may not fish for, possess, or land more than 250 lb (113 kg) of longfin squid at any time per trip, and may only land longfin squid once on any calendar day.

(iv) During a closure of the directed longfin squid fishery in Trimester II, a vessel issued either a Tier 1 or Tier 2 longfin squid moratorium permit may possess more than 250 lb (113 kg) of longfin squid per trip, provided the following conditions are met:

(A) The vessel operator has declared into the directed *Illex* squid fishery via VMS, as specified in § 648.10;

(B) The vessel is seaward of the coordinates specified at § 648.23(a)(5);

(C) The vessel possesses more than 10,000 lb (4,536 kg) of *Illex* squid on board;

(D) The vessel possesses less than 15,000 lb (6,803 kg) of longfin squid if issued a Tier 1 longfin squid moratorium permit or 5,000 lb (2,268 kg) of longfin squid if issued a Tier 2 longfin squid moratorium permit; and

(E) All fishing gear is stowed and rendered not available for immediate

use, as defined in § 648.2, once the vessel is landward of the coordinates specified at § 648.23(a)(5).

(c) *Illex squid*—(1) *Directed fishery.* A vessel must be issued a valid *Illex* squid moratorium permit to fish for, possess, or land more than 10,000 lb (4,536 kg) of *Illex* squid from or in the EEZ per trip. Unless the directed fishery is closed pursuant to § 648.24(a)(2), a vessel issued an *Illex* moratorium permit may possess an unlimited amount of *Illex* squid per trip.

(2) *Incidental fishery.* A vessel may not fish for, possess, or land more than 10,000 lb (4,536 kg) of *Illex* squid per trip at any time, and may only land *Illex* squid once on any calendar day if:

(i) A vessel is issued an open access squid/butterfish incidental catch permit; or

(ii) A vessel is issued an *Illex* moratorium permit and the directed fishery is closed pursuant to § 648.24(a)(2).

(d) *Butterfish.* Any vessel issued a butterfly permit under this part may only land butterfly once on any calendar day.

(1) *Directed fishery.* A vessel must be issued a butterfly moratorium permit to fish for, possess, or land more than 600 lb (272 kg) of butterfly per trip.

(i) *Vessels fishing with larger mesh.* A vessel issued a butterfly moratorium permit fishing with a minimum mesh size of 3 inches (76 mm) is authorized to fish for, possess, or land butterfly with no possession restriction in the EEZ per trip, provided that directed butterfly fishery has not been closed and the reduced possession limit has not been implemented, as specified in § 648.24(c)(1). When butterfly harvest is projected to reach the threshold for the butterfly fishery, as specified in § 648.24(c)(1), these vessels may not fish for, possess, or land more than 5,000 lb (2,268 kg) of butterfly per trip at any time. When butterfly harvest is projected to reach the DAH limit, as specified in § 648.24(c)(1), these vessels may not fish for, possess, or land more than 600 lb (272 kg) of butterfly per trip at any time.

(ii) *Vessels fishing with smaller mesh.* A vessel issued a butterfly moratorium permit fishing with mesh less than 3 inches (76 mm) may not fish for, possess, or land more than 5,000 lb (2,268 kg) of butterfly per trip at any time, provided that butterfly harvest has not reached the DAH limit and the reduced possession limit has not been implemented, as described in § 648.24(c)(1). When butterfly harvest is projected to reach the DAH limit, as described in § 648.24(c)(1), these vessels may not fish for, possess, or land more

than 600 lb (272 kg) of butterfish per trip at any time.

(2) *Incidental fishery.* A vessel issued a squid/butterfish incidental catch permit, regardless of mesh size used, may not fish for, possess, or land more than 600 lb (272 kg) of butterfish per trip at any.

[FR Doc. 2018-27067 Filed 12-13-18; 8:45 am]

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### 24 CFR Part 203

[Docket No. FR-6029-F-01]

RIN 2502-AJ40

#### Streamlining Warranty Requirements for Federal Housing Administration (FHA) Single-Family Mortgage Insurance: Removal of the Ten-Year Protection Plan Requirements

**AGENCY:** Office of the Assistant Secretary of Housing—Federal Housing Commissioner, HUD.

**ACTION:** Final rule.

**SUMMARY:** This final rule streamlines the home warranty requirements for FHA single-family mortgage insurance by removing the regulations that require borrowers to purchase 10-year protection plans in order to qualify for certain mortgages on newly constructed single-family homes. This action conforms with the changes made by the Housing and Economic Recovery Act of 2008 (HERA). HUD, however, is retaining the requirement that the Warranty of Completion of Construction (form HUD-92544) be executed by the builder and the buyer of a new construction home, as a condition for FHA mortgage insurance. This final rule follows publication of a February 6, 2013, proposed rule, and takes into consideration the public comments received on the proposed rule.

**DATES:** *Effective:* March 14, 2019.

**FOR FURTHER INFORMATION CONTACT:** Elissa Saunders, Director, Office of Single Family Program Development, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW, Room 9184, Washington, DC 20410-8000; telephone number 202-708-2121 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at 1-800-877-8339.

**SUPPLEMENTARY INFORMATION:**

#### I. Background—HUD's February 6, 2013, Proposed Rule

On February 6, 2013, at 78 FR 8448, HUD published a proposed rule to streamline the inspection and home warranty requirements for FHA single-family home insurance. As part of the February 6, 2013 rule, HUD proposed to eliminate its requirement that borrowers purchase a 10-year protection plan in order to qualify for FHA mortgage insurance for high loan-to-value mortgages where the dwelling was not approved for guaranty, insurance, or a direct loan before the beginning of construction and where the dwelling is less than one year old.<sup>1</sup> In 2008, HERA (Pub. L. 110-289, 122 Stat. 2654, approved July 30, 2008) eliminated the requirement of purchasing a consumer protection plan or warranty plan for such mortgages. While HUD maintained discretion to keep the requirements in place, HUD is no longer statutorily mandated to do so. Upon evaluation, HUD believes that the significant improvements in building technology and the quality of housing, as well as the adoption of uniform building codes and local jurisdictions' more stringent enforcement of building codes, mitigate HUD's previous concerns about needing to protect property owners from defects in workmanship and materials. HUD proposed, however, to retain the requirement that the Warranty of Completion of Construction (form HUD-92544) be executed by the builder and the buyer of a newly constructed home, as a condition for FHA mortgage insurance. This warranty provides assurance to FHA that the home was built according to plan, and protects the buyer against defects in equipment, material, or workmanship supplied or performed by the builder, subcontractor, or supplier. The warrantor agrees to fix and pay for the defect and restore any component of the home damaged in fulfilling the terms and conditions of the warranty. The one-year warranty commences on the date that title is conveyed to the buyer, the date that construction is complete, or upon occupancy, whichever date occurs first.

In addition to eliminating the 10-year protection plan requirements and related regulations in 24 CFR 203.18 and 203.200-209, HUD proposed to amend 24 CFR 203.50 to reflect the statutory change made by HERA and the removal of §§ 203.18(a)(3) and 200-209 of the regulations. Section 203.50(f) ("Eligibility of rehabilitation loans") cross-references § 203.18(a)(3), and because § 203.18(a)(3) was proposed for

removal, HUD proposed to also amend § 203.50(f) accordingly.

As part of the same publication, HUD also proposed to eliminate the FHA Inspector Roster (Roster), which is a list of inspectors approved by FHA as eligible to determine if the construction quality of a property is acceptable security for an FHA-insured loan in limited circumstances. HUD had combined the two proposals as they both involved streamlining requirements for FHA single-family mortgage insurance. However, the two proposals are distinct and the regulations unrelated. In addition to covering separate subjects, the regulations applied to different parties. The procedures and requirements related to the Roster applied to inspectors and lenders, while the regulations regarding 10-year protection plans applied to homebuilders, lenders, and borrowers. The public comments reflect this distinction, in that they treated these proposals separately, with the exception of expressions of general support for both proposals. In order to properly address the separate comments received on each proposal and to be more transparent about how the regulatory changes will affect different parties, this final rule only deals with elimination of the 10-year protection plan requirement. HUD published its final rule removing the FHA Inspector Roster on July 3, 2018 (83 FR 31038).

Interested readers are referred to the preamble of the February 6, 2013, proposed rule for additional historical background and explanation of the proposed regulatory changes.

#### II. Discussion of the Public Comments Related to the Elimination of the 10-Year Warranty Requirement Received on the February 6, 2013, Proposed Rule

This final rule follows publication of the February 6, 2013, proposed rule, and takes into consideration the public comments received on the proposed rule. The public comment period closed on April 8, 2013. HUD received 7 public comments in response to the proposed rule, 5 of which provided comments on elimination of the 10-year protection plan requirement. These comments were submitted by a fair housing consulting group, a home warranty provider, a housing trade association, a homebuilder, and an individual.<sup>2</sup>

Three of these comments expressed support for eliminating the 10-year protection plan requirement.

<sup>2</sup> The public comments on the proposed rule are available for download from the *Regulations.gov* website at the following link: <http://www.regulations.gov/#docketBrowser:rpp=25;po=0;dt=PS;D=HUD-2013-0011>.

<sup>1</sup> Codified at 24 CFR 203.18 and 200-209.

Commenters said the requirement for a ten-year warranty is expensive and unnecessarily increases the cost of homeownership to the consumer. One commenter said it agreed with HUD that a 10-year protection plan is no longer necessary to safeguard FHA's insurance fund since the quality of housing, building technology, and building codes and enforcement have improved significantly. This commenter said that the rule would benefit homeowners who choose to purchase a protection plan because there will be additional market competition, as current FHA approved warranty issuers would have to compete with other warranty issuers. Further, the commenter said that eliminating the 10-year protection plan requirement would relieve warranty providers and HUD of the administrative burdens of application, review, and approval of each warranty plan.

Following is a summary of the significant issues pertaining to the 10-year protection plan requirement raised by the other comments, and HUD's responses. As discussed below, after consideration of all of the comments, HUD has not changed its proposal to eliminate the 10-year protection plan requirement as it was set forth in the February 6, 2013, proposed rule.

*Comment: Elimination of the 10-Year Warranty Would Adversely Affect Minority Homeowners.* One commenter opposed eliminating the 10-year warranty requirement, writing that African Americans and Hispanic Americans make up a high percentage of FHA mortgage holders, and persons who are eligible for FHA mortgage insurance are those most likely to be targeted with defective products and services and the least likely to have the means to protect their investment if a defect should occur. The commenter wrote that based on the numbers included in the proposed rule used to calculate savings, the average homeowner would pay an annual premium of \$510, which is a significant cost, but a cost that directly benefits the homeowner, unlike other fees designed to protect the investor that have no value to the homeowner.

*HUD Response.* HUD has not revised the rule in response to this comment. HUD takes its mission to expand affordable homeownership opportunities in a non-discriminatory manner seriously, and believes that the regulatory amendments made by this final rule are consistent with those principles. Although the home warranty has been required, HUD records do not document that a claim has ever been made against the warranty discussed in this rule that resulted in a subsequent

claim to FHA for unresolved repairs, damages, or foreclosure. Despite this, as acknowledged by the commenter, the warranty requirements impose a significant cost on FHA borrowers. Congress recognized these developments and eliminated the statutory requirement for such plans in the FHA programs. This rule follows suit and eliminates the mandate that borrowers purchase such plans. The rule, however, does not prohibit borrowers who desire, and are able to afford, the extra protection from purchasing warranty protection plans. Further, the rule retains the requirement that the Warranty of Completion of Construction (form HUD-92544) be executed by the builder and the buyer of a newly constructed home, as a condition of FHA mortgage insurance.

*Comment: Quality of State and Local Codes is Not Sufficiently High to Warrant Removal of 10-Year Warranty Requirement.* Two commenters challenged the assertion that the quality of construction standards is sufficiently high enough to warrant the removal of the warranty requirement. The commenters wrote that warranty companies continue to pay out large sums to repair homes due to improper construction, and cited incidents from 2005 to 2008, when thousands of households were exposed to problem drywall, which caused odd odors, corrosion of metal components, failure of electronics and appliances, and physical ailments. A commenter also wrote that because new homes are comprised of thousands of components, and fallible human beings develop the science behind building products, better building and stricter building codes will not prevent construction defects. The commenters wrote that without the 10-year warranty, homeowners face the possibility that the builder may have gone out of business or entered bankruptcy and they are unable to identify the source of the defective materials. The commenters recommended withdrawing this proposed rule and conducting additional research into the number of complaints filed with state regulators and local building code officials.

*HUD Response.* HUD agrees that the complete elimination of construction defects, while a worthwhile goal is most likely not a feasible outcome given human fallibility and the limitations of modern technology. HUD does not agree, however, that this justifies the imposition of a costly warranty mandate. The rule does not prohibit homeowners who wish to purchase warranty protection plans from doing so, it only eliminates the mandate that

they must purchase such plans. Further, HUD reiterates that the final rule continues to condition FHA mortgage insurance on the Warranty of Completion of Construction (form HUD-92544) which provides assurance that the home was built according to plan and protects the buyer against construction defects. With respect to unforeseen events, such as the concerns noted by the commenter regarding problem drywall, HUD will continue to be at the forefront of efforts to take or support enforcement action, as appropriate, and to provide economic relief for impacted homebuyers. For example, HUD encouraged its mortgage lenders nationwide to consider extending temporary relief to allow families experiencing problems paying their mortgages because of problem drywall, to allow the homeowner time to repair their homes.<sup>3</sup> FHA pursued a policy of loan forbearance for one year to borrowers impacted by the drywall problem. Further, the United States Consumer Product Safety Commission (CPSC) and HUD staff representing the Interagency Task Force on Problem Drywall no longer recommended the removal of all electrical wiring in homes with problem drywall after a study conducted on behalf of CPSC was completed. The change in the government's protocol may have reduced the cost of remediation for many homes (CPSC and HUD Issue Updated Remediation Protocol for Homes with Problem Drywall, Release Number 11-176, Release Date: 18, 2011).

### III. Findings and Certifications

#### *Regulatory Review—Executive Orders 12866 and 13563*

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulation and Regulatory Review) directs executive agencies to analyze regulations that are "outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned." Executive Order 13563 also directs that where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory

<sup>3</sup> See [http://portal.hud.gov/hudportal/HUD?src=/press/press\\_releases\\_media\\_advisories/2010/HUDNo.10-068](http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2010/HUDNo.10-068).



approaches that reduce burdens and maintain flexibility and freedom of choice for the public.

This rule was determined to be a “significant regulatory action” as defined in section 3(f) of Executive Order 12866 (although not an economically significant regulatory action, as provided under section 3(f)(1) of the Executive Order). The removal of this requirement is consistent with goals of Executive Order 13563.

The rule does not rise to the level of an economically “significant regulatory action” under section 3(f)(1) of Executive Order 12866. HUD expects the elimination of the 10-year warranty plan to have economic benefits and costs. However, neither the economic costs nor the benefits of the elimination are greater than the \$100 million threshold that determines economic significance under Executive Orders 12866 and 13563. The preamble to the February 6, 2013, proposed rule at 78 FR 8453–8454, provided a discussion of the anticipated costs and benefits of the regulatory amendments. Please see the below section on the Summary of Benefits and Costs, which summarizes and updates the costs and benefits of the regulatory changes.

#### *Executive Order 13771*

Executive Order 13771, entitled “Reducing Regulation and Controlling Regulatory Costs,” was issued on January 30, 2017. This final rule is considered an E.O. 13771 deregulatory action. Details on the estimated cost savings of this proposed rule can be found below in the Summary of Benefits and Costs, and in the rule’s Regulatory Impact Analysis.

#### *Summary of Benefits and Costs of Final Rule*

Concurrently with this final rule, HUD is publishing its final Regulatory Impact Analysis (RIA) that examines the costs and benefits of this final rule. The RIA is available on-line at: <http://www.regulations.gov>. The major findings in the RIA are presented in this summary.

Reducing risk to borrowers and FHA of substandard construction was the primary purpose of requiring the purchase of a home warranty. Positive trends in the housing sector have weakened the need for such a requirement. Increased quality of construction materials, and the standardization of building codes and building code enforcement, protect consumers better now than when the warranty requirement regulation was first promulgated. Although the home warranty is required, HUD records do

not document that a claim has ever been made against the warranty discussed in this rule that resulted in a subsequent claim to FHA for unresolved repairs, damages, or foreclosure. Thus, HUD believes that the benefit in cost savings to consumers would exceed the potential cost of any risk introduced.

To understand the magnitude of the potential gain to consumers, HUD first approximated the resources devoted to the purchase of home warranties. On an annual basis, from 50,000 to 60,000 warranties are issued to FHA borrowers (data provided by FHA). The analysis uses 55,000 to represent a typical year. The average coverage of the mandated warranty plans is \$200,000. The average premium charged under the plans is \$2.70 per \$1,000 of coverage (data provided by warranty companies). The average annual cost per homeowner is approximately \$540 (\$2.70/\$1,000 × \$200,000). Over ten years, the present value of the \$540 annual payment would range from \$4,060 (at 7 percent) to \$4,740 (at 3 percent).

If the home warranty were a regulatory burden of no utility, then the annual savings to consumers would equal the full amount of the fee of \$540. The aggregate savings would be approximately \$30 million (\$540 times 55,000 warranties). However, the gain is likely less than the estimate of \$30 million. There are homebuyers who would demand and sellers who would supply a long-term warranty even when not required. If a buyer is extremely risk-averse or if a seller prefers to use home warranties to facilitate sales, their purchase of the home warranty would be unaffected by a rule not requiring it. Estimates of the general prevalence of home warranties vary, with studies finding that between 10 and 30 percent of homes have warranties. If 10 percent of homebuyers would have purchased a long-term warranty without the requirement, then consumer savings would be \$27 million, and if 30 percent of homebuyers would have purchased a long-term warranty without the requirement, then the consumer savings would average \$21 million.

The elimination of the warranty requirement also eliminates paperwork burden. Lenders face paperwork burden from reviewing the home warranty before closing. HUD estimates that a lender requires 0.1 hours to process one warranty. Loan officers earn a median hourly wage of \$31;<sup>4</sup> the opportunity cost of their time would be twice<sup>5</sup> that,

<sup>4</sup> <https://www.bls.gov/ooh/business-and-financial/loan-officers.htm>.

<sup>5</sup> Includes benefits, management overhead, rent, employer taxes, and equipment.

or \$62 per hour. The burden per warranty is \$6.20 (0.1 hours × \$62). At a volume of 55,000 warranties, the total paperwork burden relieved is \$341,000. Savings will extend to the U.S. government. The elimination of the warranty requirement eliminates the cost to HUD associated with review of the warranty plans submitted for approval and renewal. Administrative burdens to HUD include review of warranty plans for acceptance, review of plan renewals, and maintenance of HUD’s home warranty web page.

There is a potential risk to FHA from eliminating the requirement of construction warranties for high-LTV loans. A major structural defect would adversely affect the value of a property and potentially lead to a foreclosure. FHA would bear the cost of the claim directly, and if systemic these costs could be passed on to program participants through higher premiums. Advances in detecting the causes of structural failure reduce both the probability and cost of any structural failure. To ensure that there are no observable construction defects in newly built homes bought by FHA-insured borrowers, HUD is retaining the requirement that the Warranty of Completion of Construction (form HUD–92544) be executed by the builder and the buyer of the home, as a condition for FHA mortgage insurance. In addition, the rule requires that inspections be performed by qualified individuals, to further mitigate risk. If all these safeguards fail, then HUD estimates that the average aggregate loss to FHA (a transfer of risk) is \$1.3 million, which is far below the consumer benefits generated by the rule.

#### *Paperwork Reduction Act*

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Control Numbers 2502–0059 (Warranty of Completion of Construction (form HUD–92544)). In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

#### *Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking



requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. As noted above in this preamble, this rule is a deregulatory action taken by HUD that will alleviate the economic costs borne by participants in the FHA single family mortgage insurance programs. As discussed in this preamble, removal of the requirement for a 10-year protection plan would ease burdens on lenders and homebuilders and does not preclude borrowers from purchasing such plans. HUD is removing this requirement because it has deemed they are no longer necessary. Therefore, the undersigned certifies that this rule will not have a significant impact on a substantial number of small entities.

#### *Environmental Impact*

This rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. In addition, part of this rule changes a statutorily required and/or discretionary establishment and review of loan limits. Accordingly, under 24 CFR 50.19(c)(1) and (c)(6), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

#### *Executive Order 13132, Federalism*

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments or is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule will not have federalism implications and would not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

#### *Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This rule does not impose any federal mandates on any State, local, or tribal governments, or on

the private sector, within the meaning of UMRA.

#### *Catalogue of Federal Domestic Assistance*

The Catalogue of Federal Domestic Assistance Number for the principal FHA single-family mortgage insurance program is 14.117.

#### **List of Subjects in 24 CFR Part 203**

Hawaiian Natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

Accordingly, for the reasons discussed in the preamble, HUD amends 24 CFR part 203 to read as follows:

#### **PART 203—SINGLE FAMILY MORTGAGE INSURANCE**

■ 1. The authority citation for part 203 continues to read as follows:

**Authority:** 12 U.S.C. 1709, 1710, 1715b, 1715z–16, and 1715u; 42 U.S.C. 3535(d).

##### **§ 203.18 [Amended]**

■ 2. In § 203.18, remove paragraph (a)(3) and redesignate paragraph (a)(4) as paragraph (a)(3).

■ 3. In § 203.50, revise paragraph (f)(1) to read as follows:

##### **§ 203.50 Eligibility of rehabilitation loans.**

\* \* \* \* \*

(f) \* \* \*

(1)(i) The limits prescribed in § 203.18(a)(1) (in the case of a dwelling to be occupied as a principal residence, as defined in § 203.18(f)(1));

(ii) The limits prescribed in § 203.18(a)(1) and (3) (in the case of a dwelling to be occupied as a secondary residence, as defined in § 203.18(f)(2));

(iii) 85 percent of the limits prescribed in § 203.18(c), or such higher limit, not to exceed the limits set forth in § 203.18(a)(1), as Commissioner may prescribe (in the case of an eligible non-occupant mortgagor as defined in § 203.18(f)(3));

(iv) The limits prescribed in § 203.18a, based upon the sum of the estimated cost of rehabilitation and the Commissioner’s estimate of the value of the property before rehabilitation; or

\* \* \* \* \*

##### **§§ 203.200 through 203.209 [Removed]**

■ 4. Remove the undesignated center heading “Insured Ten-Year Protection Plans (Plan)” and §§ 203.200 through 203.209.

Dated: December 3, 2018.

**Brian D. Montgomery,**

*Assistant Secretary for Housing—Federal Housing Commissioner.*

[FR Doc. 2018–27116 Filed 12–13–18; 8:45 am]

**BILLING CODE 4210–67–P**

#### **DEPARTMENT OF THE TREASURY**

#### **Alcohol and Tobacco Tax and Trade Bureau**

#### **27 CFR Part 9**

**[Docket No. TTB–2018–0004; T.D. TTB–154; Ref: Notice No. 173]**

**RIN 1513–AC37**

#### **Expansion of the Monticello Viticultural Area**

**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau, Treasury.

**ACTION:** Final rule; Treasury decision.

**SUMMARY:** The Alcohol and Tobacco Tax and Trade Bureau (TTB) is expanding the approximately 1,320-square mile “Monticello” viticultural area in Albemarle, Greene, Nelson, and Orange Counties, in Virginia, by approximately 166 square miles, into Fluvanna County, Virginia. The established viticultural area and the expansion area are not located within any other established viticultural area. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

**DATES:** This final rule is effective January 14, 2019.

**FOR FURTHER INFORMATION CONTACT:** Trevar D. Kolodny, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; phone 202–559–6222.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background on Viticultural Areas**

##### *TTB Authority*

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act

pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Department Order 120–01, dated December 10, 2013 (superseding Treasury Order 120–01, dated January 24, 2003), to the TTB Administrator to perform the functions and duties in the administration and enforcement of this law.

Part 4 of the TTB regulations (27 CFR part 4) authorizes TTB to establish definitive viticultural areas and regulate the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission of petitions for the establishment or modification of American viticultural areas (AVAs) and lists the approved AVAs.

#### *Definition*

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features, as described in part 9 of the regulations, and a name and a delineated boundary, as established in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to the wine's geographic origin. The establishment of AVAs allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of an AVA is neither an approval nor an endorsement by TTB of the wine produced in that area.

#### *Requirements*

Section 4.25(e)(2) of the TTB regulations (27 CFR 4.25(e)(2)) outlines the procedure for proposing an AVA and provides that any interested party may petition TTB to establish a grape-growing region as an AVA. Petitioners may use the same process to request changes involving established AVAs. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions for modifying established AVAs. Petitions to expand an established AVA must include the following:

- Evidence that the area within the proposed expansion area boundary is nationally or locally known by the name of the established AVA;

- An explanation of the basis for defining the boundary of the proposed expansion area;
- A narrative description of the features of the proposed expansion area that affect viticulture, such as climate, geology, soils, physical features, and elevation, that make the proposed expansion area similar to the established AVA and distinguish it from adjacent areas outside the established AVA boundary;
- The appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed expansion area, with the boundary of the proposed expansion area clearly drawn thereon; and
- A detailed narrative description of the proposed expansion area boundary based on USGS map markings.

#### **Petition To Expand the Monticello AVA**

TTB received a petition from George Cushnie, co-owner of Thistle Gate Vineyard, submitted on behalf of himself and a second vineyard owner, proposing to expand the established Monticello AVA. The Monticello AVA (27 CFR 9.48) was established by T.D. ATF–164, which was published in the **Federal Register** on January 23, 1984 (49 FR 2758). The Monticello AVA covers approximately 1,320 square miles in Albemarle, Greene, Nelson, and Orange Counties in Virginia. The Monticello AVA and the proposed expansion area do not overlap any other established or proposed AVAs.

The proposed expansion area extends beyond the Albemarle County line, which currently serves as the southeastern border of the established AVA, to encompass approximately 166 square miles of Fluvanna County, between the James and Rivanna Rivers. The petition included a letter from the President of the Jeffersonian Wine Grape Growers Society, an association of over 30 wineries within the existing Monticello AVA, supporting the proposed expansion.

When the petition was filed, there were two commercially-producing vineyards covering a total of approximately 15 acres within the proposed expansion area. Since the petition was filed, an additional vineyard has been established in the proposed expansion area, covering approximately 6.5 acres.

According to the petition, the soils and climate of the proposed expansion area are similar to those of the established Monticello AVA. The soils in Fluvanna County consist of the Nason, Manteo, Tatum, and Louisburg types, which are also the main soil types found in Albemarle County, which

forms the heart of the existing AVA, and Orange County, which forms the northeast portion of the existing AVA. The petition further notes that the Nelson and Manteo soils are Virginia soils particularly well-suited to viticulture, given that they are silty loams, characterized by moderate levels of nutritious organic content and good drainage conditions.

The climate of the proposed expansion is similar to the climate of the existing AVA. Gaps in the Blue Ridge Mountains to the east cause “rivers of cold air” to flow through corridors that converge east of the Monticello AVA and the new expansion area. As a result, temperatures in the Monticello AVA and the proposed expansion area are 4–5 °F warmer than the climate in the surrounding areas outside the Monticello AVA. This warmer weather allows for a longer growing season and protection from frosts, which can be fatal to ripening grapes. This warmer weather was an important factor in establishing the Monticello AVA in 1982, and is a point of similarity that the proposed expansion area shares with the existing AVA, in contrast to surrounding areas. The growing season of the proposed expansion area is typically a minimum of 190 or even 200 days, which is similar to the 190–200 day average of the Orange County portion of the Monticello AVA. By contrast, the lands further east and south of the proposed expansion area average 150 days and less.

#### **Notice of Proposed Rulemaking and Comments Received**

TTB published Notice No. 173 in the **Federal Register** on April 6, 2018 (83 FR 14787), proposing to expand the Monticello AVA. In the notice, TTB summarized the evidence from the petition regarding the name, boundary, and distinguishing features for the proposed expansion area. For a detailed description of the evidence relating to the name, boundary, and distinguishing features of the proposed expansion area, and for a comparison of the distinguishing features of the proposed expansion area to the surrounding areas and to the established Monticello AVA, see Notice No. 173.

#### *Comments Received*

In Notice No. 173, TTB solicited comments on the accuracy of the name, boundary, climatic, and other required information submitted in support of the petition. The comment period closed on June 5, 2018.

In response to Notice No. 173, TTB received one comment from Will and

Leah Wentz, who have established a vineyard in the proposed expansion area, and who supported the proposed expansion of the Monticello AVA. They claim that they selected their vineyard site in Fluvanna County based on the various viticultural attributes of the area, especially including its climate and soils, which they said were accurately described in the initial petition. TTB did not receive any comments objecting to the proposed AVA expansion.

#### TTB Determination

After careful review of the petition, TTB finds that the evidence provided by the petitioner sufficiently demonstrates that the proposed expansion area shares the characteristics of the established Monticello AVA and should also be recognized as part of that AVA. Accordingly, under the authority of the FAA Act, section 1111(d) of the Homeland Security Act of 2002, and parts 4 and 9 of the TTB regulations, TTB expands the 1,320 square mile "Monticello" AVA to include the approximately 166 square mile expansion area as described in Notice No. 173, effective 30 days from the publication date of this document.

#### Boundary Description

See the narrative description of the boundary of the AVA expansion in the regulatory text published at the end of this final rule.

#### Maps

The petitioner provided the required maps, and they are codified in the regulatory text.

#### Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. For a wine to be labeled with an AVA name or with a brand name that includes an AVA name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name, and the wine must meet the other conditions listed in § 4.25(e)(3) of the TTB regulations (27 CFR 4.25(e)(3)). If the wine is not eligible for labeling with an AVA name and that name appears in the brand name, then the label is not in compliance, and the bottler must change the brand name and obtain approval of a new label. Similarly, if the AVA name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Different rules apply if a wine has a brand name containing an AVA name

that was used as a brand name on a label approved before July 7, 1986. See § 4.39(i)(2) of the TTB regulations (27 CFR 4.39(i)(2)) for details.

The expansion of the Monticello AVA will not affect any other existing AVA, and bottlers using "Monticello" as an appellation of origin or in a brand name for wines made from grapes within the "Monticello" AVA will not be affected by this expansion of the Monticello AVA. The expansion of the Monticello AVA will allow vintners to use "Monticello" as an appellation of origin for wines made primarily from grapes grown within the expansion area if the wines meet the eligibility requirements for the appellation.

#### Regulatory Flexibility Act

TTB certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of an AVA name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

#### Executive Order 12866

It has been determined that this rule is not a significant regulatory action as defined by Executive Order 12866 of September 30, 1993. Therefore, no regulatory assessment is required.

#### Drafting Information

Trevar D. Kolodny of the Regulations and Rulings Division drafted this final rule.

#### List of Subjects in 27 CFR Part 9

Wine.

#### The Regulatory Amendment

For the reasons discussed in the preamble, TTB amends title 27, chapter I, part 9, Code of Federal Regulations, as follows:

#### PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

**Authority:** 27 U.S.C. 205.

#### Subpart C—Approved American Viticultural Areas

■ 2. Section 9.48 is amended by revising paragraph (c)(16), redesignating paragraph (c)(17) as (c)(19), and adding new paragraph (c)(17) and paragraph (c)(18) to read as follows:

#### § 9.48 Monticello.

\* \* \* \* \*

(c) \* \* \*

(16) Then continuing southwest along the county line to its intersection with the Rivanna River;

(17) Then southeast along the Rivanna River to its confluence with the James River, near the Fluvanna-Goochland County line;

(18) Then southwest, then northwest along the James River to its intersection with the Albemarle County line;

\* \* \* \* \*

Signed: September 5, 2018.

**John J. Manfreda,**  
*Administrator.*

Approved: December 4, 2018.

**Timothy E. Skud,**  
*Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).*

[FR Doc. 2018-27125 Filed 12-13-18; 8:45 am]

**BILLING CODE 4810-31-P**

## DEPARTMENT OF THE TREASURY

### Alcohol and Tobacco Tax and Trade Bureau

#### 27 CFR Part 9

[Docket No. TTB-2018-0003; T.D. TTB-153;  
Ref: Notice No. 172]

**RIN 1513-AC36**

#### Expansion of the Arroyo Seco Viticultural Area

**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau, Treasury.

**ACTION:** Final rule; Treasury decision.

**SUMMARY:** The Alcohol and Tobacco Tax and Trade Bureau (TTB) is expanding the approximately 18,240-acre "Arroyo Seco" viticultural area in Monterey County, California, by approximately 90 acres. The established Arroyo Seco viticultural area and the expansion area both lie within the established Monterey viticultural area and the larger, multi-county Central Coast viticultural area. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

**DATES:** This final rule is effective January 14, 2019.

**FOR FURTHER INFORMATION CONTACT:** Christopher Forster-Smith, Alcohol and Tobacco Tax and Trade Bureau, Regulations and Rulings Division, 1310 G Street NW, Box 12, Washington, DC 20005; phone 202-453-1039, ext. 150.

**SUPPLEMENTARY INFORMATION:**

## Background on Viticultural Areas

### *TTB Authority*

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Department Order 120-01, dated December 10, 2013 (superseding Treasury Order 120-01, dated January 24, 2003), to the TTB Administrator to perform the functions and duties in the administration and enforcement of this law.

Part 4 of the TTB regulations (27 CFR part 4) authorizes TTB to establish definitive viticultural areas and regulate the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission of petitions for the establishment or modification of American viticultural areas (AVAs) and lists the approved AVAs.

### *Definition*

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features, as described in part 9 of the regulations, and a name and a delineated boundary, as established in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to the wine's geographic origin. The establishment of AVAs allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of an AVA is neither an approval nor an endorsement by TTB of the wine produced in that area.

### *Requirements*

Section 4.25(e)(2) of the TTB regulations (27 CFR 4.25(e)(2)) outlines

the procedure for proposing an AVA and provides that any interested party may petition TTB to establish a grape-growing region as an AVA. Petitioners may use the same process to request changes involving established AVAs. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions for modifying established AVAs. Petitions to expand an established AVA must include the following:

- Evidence that the area within the proposed expansion area boundary is nationally or locally known by the name of the established AVA;
- An explanation of the basis for defining the boundary of the proposed expansion area;
- A narrative description of the features of the proposed expansion area that affect viticulture, such as climate, geology, soils, physical features, and elevation, that make the proposed expansion area similar to the established AVA and distinguish it from adjacent areas outside the established AVA boundary;
- The appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed expansion area, with the boundary of the proposed expansion area clearly drawn thereon; and
- A detailed narrative description of the proposed expansion area boundary based on USGS map markings.

### **Petition To Expand the Arroyo Seco AVA**

TTB received a petition from Ann Hougham, owner of the Mesa del Sol Vineyards, proposing to expand the established "Arroyo Seco" AVA. The Arroyo Seco AVA (27 CFR 9.59) was established by T.D. ATF-131, which was published in the **Federal Register** on April 15, 1983 (48 FR 16245). The Arroyo Seco AVA covers approximately 18,240 acres in Monterey County, California. The proposed expansion area and the established AVA are both located within the Monterey AVA (27 CFR 9.98) and the larger, multi-county Central Coast AVA (27 CFR 9.75).

The proposed expansion area contains approximately 90 acres and is adjacent to the far southwestern corner of the established Arroyo Seco AVA. The proposed expansion area is located on an upland terrace on the northern bank of a creek known as the Arroyo Seco, which is Spanish for "dry creek." There is one vineyard covering approximately 14 acres within the proposed expansion area. The petition included a copy of an email from the Arroyo Seco Winegrowers, stating that the proposed expansion was shared with its members

and received no objections. Unless otherwise noted, all information and data pertaining to the proposed expansion area contained in this document come from the petition and its supporting exhibits.

According to the petition, the soils and topography of the proposed expansion area are similar to those of the established Arroyo Seco AVA. The soils of the proposed expansion area and the established AVA are gravelly and fine sandy loams with low lime and salt content and pH levels between 5.1 and 8.4. The proposed expansion area contains soils primarily from the Lockwood, Elder, and Mocho series, which are all principal soil series within the established Arroyo Seco AVA. Finally, the proposed expansion area and the established AVA are both regions of terraces and alluvial fans with elevations from approximately 600 to 700 feet, and slope angles between 0 and 9 percent.

Although the proposed expansion area is more similar to the Arroyo Seco AVA than the surrounding regions, the proposed expansion area still shares some of the features of the surrounding Monterey and Central Coast AVAs. For example, the proposed Arroyo Seco AVA expansion area has moderate elevations and soils with lime, salt, and pH levels similar to the Monterey AVA and shares the marine climate influence of the larger Central Coast AVA due to its proximity to the Pacific Ocean. However, the soils of the proposed expansion area have medium-to-high levels of organic matter, compared to the very low levels of organic matter that characterize the Monterey AVA. Additionally, due to its location east of the Santa Lucas Mountains, the proposed expansion area is not as exposed to the marine air and fog as the more western regions of the Central Coast AVA that are closer to the ocean. Finally, because of its much smaller size, the topographical features of the proposed expansion area are more uniform than the diverse features of the large multicounty Central Coast AVA, and are more similar to the topographical features of the Arroyo Seco AVA, which is located on the same sloping bench lands and terraces along the Arroyo Seco as the proposed expansion area.

### **Notice of Proposed Rulemaking and Comments Received**

TTB published Notice No. 172 in the **Federal Register** on Friday, April 6, 2018 (83 FR 14791), proposing to expand the Arroyo Seco AVA. In the notice, TTB summarized the evidence from the petition regarding the name,

boundary, and distinguishing features for the proposed expansion area. For a detailed description of the evidence relating to the name, boundary, and distinguishing features of the proposed expansion area, and for a comparison of the distinguishing features of the proposed expansion area to the surrounding areas and to the established Arroyo Seco AVA, see Notice No. 172.

In Notice No. 172, TTB solicited comments on the accuracy of the name, boundary, climatic, and other required information submitted in support of the petition. The comment period closed on June 5, 2018.

TTB received no comments in response to Notice No. 172.

#### TTB Determination

After careful review of the petition, TTB finds that the evidence provided by the petitioner sufficiently demonstrates that although the proposed expansion area shares some of the broader characteristics of the larger Monterey and Central Coast AVAs, it is also similar to the established Arroyo Seco AVA and should also be recognized as part of that AVA. Accordingly, under the authority of the FAA Act, section 1111(d) of the Homeland Security Act of 2002, and part 4 of the TTB regulations, TTB expands the 18,240 acre “Arroyo Seco” AVA to include the approximately 90-acre expansion area as described in Notice No. 172, effective 30 days from the publication date of this document.

#### Boundary Description

See the narrative description of the boundary of the AVA expansion in the regulatory text published at the end of this final rule.

#### Maps

The petitioner provided the required maps, and they are listed in the regulatory text of 27 CFR 9.59.

#### Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine’s true place of origin. For a wine to be labeled with an AVA name or with a brand name that includes an AVA name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name, and the wine must meet the other conditions listed in § 4.25(e)(3) of the TTB regulations (27 CFR 4.25(e)(3)). If the wine is not eligible for labeling with an AVA name and that name appears in the brand name, then the label is not in compliance, and the bottler must change the brand name and

obtain approval of a new label. Similarly, if the AVA name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Different rules apply if a wine has a brand name containing an AVA name that was used as a brand name on a label approved before July 7, 1986. See § 4.39(i)(2) of the TTB regulations (27 CFR 4.39(i)(2)) for details.

The expansion of the Arroyo Seco AVA will not affect any other existing AVA, and bottlers using “Arroyo Seco,” “Monterey,” or “Central Coast” as an appellation of origin or in a brand name for wines made from grapes within the “Arroyo Seco,” “Monterey,” or “Central Coast” AVAs will not be affected by this expansion of the Arroyo Seco AVA. The expansion of the Arroyo Seco AVA will allow vintners to use “Arroyo Seco,” “Monterey,” or “Central Coast” as an appellation of origin for wines made primarily from grapes grown within the expansion area if the wines meet the eligibility requirements for the appellation.

#### Regulatory Flexibility Act

TTB certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of an AVA name would be the result of a proprietor’s efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

#### Executive Order 12866

It has been determined that this rule is not a significant regulatory action as defined by Executive Order 12866 of September 30, 1993. Therefore, no regulatory assessment is required.

#### Drafting Information

Christopher Forster-Smith of the Regulations and Rulings Division drafted this final rule.

#### List of Subjects in 27 CFR Part 9

Wine.

#### The Regulatory Amendment

For the reasons discussed in the preamble, TTB amends title 27, chapter I, part 9, Code of Federal Regulations, as follows:

#### PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

#### Subpart C—Approved American Viticultural Areas

■ 2. Section 9.59 is amended by revising paragraphs (c) introductory text and (c)(1), redesignating paragraphs (c)(2) through (c)(21) as paragraphs (c)(3) through (c)(22), and adding new paragraph (c)(2) to read as follows:

##### § 9.59 Arroyo Seco.

\* \* \* \* \*

(c) *Boundaries.* The Arroyo Seco viticultural area is located in Monterey County, California. The beginning point is found on the “Sycamore Flat” U.S.G.S. map at the intersection of Jamesburg Road (known locally as Carmel Valley Road) and Arroyo Seco Road, near the intersection of sections 21, 22, 28, and 27, T.19 S., R. 5 E. From the beginning point, proceed southwesterly along Arroyo Seco Road to its intersection with Piney Creek.

(1) Then southeasterly along Piney Creek to its confluence with the Arroyo Seco in section 27, T. 19 S., R. 5 E.

(2) Then northerly along the Arroyo Seco to its intersection with the southern boundary of section 22, T. 19 S., R 5 E.

\* \* \* \* \*

Signed: September 19, 2018.

John J. Manfreda,  
Administrator.

Approved: December 4, 2018.

Timothy E. Skud,  
Deputy Assistant Secretary (Tax, Trade, and  
Tariff Policy).

[FR Doc. 2018–27014 Filed 12–13–18; 8:45 am]

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#### DEPARTMENT OF THE TREASURY

#### Alcohol and Tobacco Tax and Trade Bureau

#### 27 CFR Part 9

[Docket No. TTB–2018–0006; T.D. TTB–155;  
Ref: Notice No. 175]

RIN 1513–AC39

#### Establishment of the Van Duzer Corridor Viticultural Area and Clarification of the Eola-Amity Hills Viticultural Area Boundary Description

**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau, Treasury.

**ACTION:** Final rule; Treasury decision.

**SUMMARY:** The Alcohol and Tobacco Tax and Trade Bureau (TTB) establishes the approximately 59,871-acre “Van Duzer Corridor” viticultural area in Polk and

Yamhill Counties, Oregon. The viticultural area lies entirely within the established Willamette Valley viticultural area. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase. TTB also clarifies the boundary description of the adjacent Eola-Amity Hills viticultural area.

**DATES:** This final rule is effective January 14, 2019.

**FOR FURTHER INFORMATION CONTACT:** Kaori Flores, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; phone 202-453-1039, ext. 3190.

**SUPPLEMENTARY INFORMATION:**

**Background on Viticultural Areas**

*TTB Authority*

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Department Order 120-01, dated December 10, 2013 (superseding Treasury Order 120-01, dated January 24, 2003), to the TTB Administrator to perform the functions and duties in the administration and enforcement of these laws.

Part 4 of the TTB regulations (27 CFR part 4) authorizes TTB to establish definitive viticultural areas and regulate the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission to TTB of petitions for the establishment or modification of American viticultural areas (AVAs) and lists the approved AVAs.

*Definition*

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having

distinguishing features, as described in part 9 of the regulations, and a name and a delineated boundary, as established in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to the wine's geographic origin. The establishment of AVAs allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of an AVA is neither an approval nor an endorsement by TTB of the wine produced in that area.

*Requirements*

Section 4.25(e)(2) of the TTB regulations (27 CFR 4.25(e)(2)) outlines the procedure for proposing an AVA and provides that any interested party may petition TTB to establish a grape-growing region as an AVA. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions for the establishment or modification of AVAs. Petitions to establish an AVA must include the following:

- Evidence that the area within the proposed AVA boundary is nationally or locally known by the AVA name specified in the petition;
- An explanation of the basis for defining the boundary of the proposed AVA;
- A narrative description of the features of the proposed AVA affecting viticulture, such as climate, geology, soils, physical features, and elevation, that make the proposed AVA distinctive and distinguish it from adjacent areas outside the proposed AVA boundary;
- The appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed AVA, with the boundary of the proposed AVA clearly drawn thereon; and
- A detailed narrative description of the proposed AVA boundary based on USGS map markings.

**Van Duzer Corridor Petition**

TTB received a petition from Mr. Jeff Havlin, the owner of Havlin Vineyard and chair of the Van Duzer Corridor AVA Committee, on behalf of himself and other local grape growers and vintners proposing the establishment of the "Van Duzer Corridor" AVA in portions of Yamhill and Polk Counties.

The proposed Van Duzer Corridor AVA is located in Oregon and lies entirely within the established Willamette Valley AVA (27 CFR 9.90) and covers approximately 59,871 acres. There are 17 commercially-producing

vineyards covering a total of approximately 1,000 acres, as well as 6 wineries, within the proposed AVA.

According to the petition, the distinguishing features of the proposed Van Duzer Corridor AVA are its topography, climate, and soils. The topography of the proposed Van Duzer Corridor is characterized by low elevations and gently rolling hills. The low elevations allow cool breezes to flow relatively unimpeded from the Pacific Ocean, through the Coastal Ranges, forming a wind corridor gap known as the "Van Duzer Corridor." The western end of the Van Duzer Corridor wind gap is narrow and squeezed by high elevations to the north and south, leaving little room for viticulture. However, the eastern end of the Van Duzer Corridor wind gap, where the proposed Van Duzer Corridor AVA is located, features the same low elevations, and rolling hills as the western portion, with the distinction of having a wider area suitable for vineyards. Within the Van Duzer Corridor AVA, the elevation does not impede the eastward-flowing marine air, allowing higher wind speeds to flow through. In contrast, the surrounding regions all have higher elevations.

Additionally, the climate of the proposed Van Duzer Corridor AVA is characterized by consistent high wind speeds and low cumulative growing degree day (GDD) accumulations.<sup>1</sup> The consistently high winds in the proposed AVA contribute to thicker grape skins, and raise the levels of phenolic compounds in the fruit. In contrast, the wind speeds to the north and south-southeast of the proposed AVA are slower. The proposed Van Duzer Corridor has lower GDD accumulations than the surrounding regions to the north and southeast, indicating that its temperatures are generally cooler. The cooler temperatures ripen the fruit slowly, creating a longer hang time than for the same grape varietal grown in a region with higher GDD accumulations. The longer hang time contributes to a reduced acidity level. TTB notes that the petition did not include wind speed data and GDD accumulations for the regions to the west and south-southwest of the proposed AVA.

Lastly, the soils of the proposed Van Duzer Corridor AVA are primarily

<sup>1</sup> In the Winkler climate classification system, annual heat accumulation during the growing season, measured in annual growing degree days (GDDs), defines climatic regions. One GDD accumulates for each degree Fahrenheit that a day's mean temperature is above 50 degrees, the minimum temperature required for grapevine growth. See Albert J. Winkler, *General Viticulture* (Berkeley: University of California Press, 1974), pages 61-64.

uplifted marine sedimentary loams and silts with alluvial overlay, as well as some uplifted basalt. The soils are typically shallow, well-drained, and have a bedrock of siltstone. The high silt and clay levels in the soils balance the overall pH level of the soil by buffering against a sudden increase or decrease in soil pH. The buffering effect is beneficial to vineyards because it boosts the ability of the soils to maintain a stable pH level. In contrast, the soils immediately outside the northern and western boundaries contain soils from different soil series. Farther north and west, the soils contain higher concentrations of basalt and other volcanic materials. In contrast, east of the proposed Van Duzer Corridor AVA, within the Eola-Amity Hills AVA (27 CFR 9.202), the soils contain larger amounts of volcanic material than the proposed AVA. Additionally, south of the proposed AVA, the soils contain large concentrations of Ice Age loess, which is not found in the proposed Van Duzer Corridor AVA.

#### Notice of Proposed Rulemaking and Comments Received

TTB published Notice No. 175 in the **Federal Register** on April 6, 2018 (83 FR 14795), proposing to establish the Van Duzer Corridor AVA. In the notice, TTB summarized the evidence from the petition regarding the name, boundary, and distinguishing features for the proposed AVA. The notice also compared the distinguishing features of the proposed AVA to the surrounding areas. For a detailed description of the evidence relating to the name, boundary, and distinguishing features of the proposed AVA, and for a detailed comparison of the distinguishing features of the proposed AVA to the surrounding areas, see Notice No. 175.

In Notice No. 175, TTB solicited comments on the accuracy of the name, boundary, and other required information submitted in support of the petition. In addition, given the proposed Van Duzer Corridor AVA's location within the Willamette Valley AVA, TTB solicited comments on whether the evidence submitted in the petition regarding the distinguishing features of the proposed AVA sufficiently differentiates it from the Willamette Valley AVA. Finally, TTB requested comments on whether the geographic features of the proposed AVA are so distinguishable from the Willamette Valley AVA that the proposed Van Duzer Corridor AVA should no longer be part of the established AVA. The comment period closed June 5, 2018.

#### Comments Received on the Proposed Van Duzer Corridor AVA

In response to Notice No. 175, TTB received a total of 18 comments. Commenters included local residents, members of the wine industry, several vineyard employees, wine consultants, and consumers. All of the comments generally supported the establishment of the proposed Van Duzer Corridor AVA, with six of the commenters noting the effects of the proposed AVA's higher wind speeds on the grape skins. Four of the commenters also supported the establishment of the proposed Van Duzer Corridor AVA due to the marine sedimentary soils and the unique topography. None of the comments opposed the establishment of the proposed AVA.

TTB received one comment that supported the establishment of the proposed AVA, but the commenter also suggested "Salt Creek" as an "equally suitable" and "much more pleasant" name. However, TTB regulations require a proposed AVA name to be supported by evidence that demonstrates the name is currently used to refer to the proposed AVA. See § 9.12(a)(1). The commenter did not submit evidence of the current use of the name "Salt Creek" to refer to the region of the proposed AVA, nor did she provide any documentation refuting the evidence provided in the petition in support of the name "Van Duzer Corridor." Therefore, TTB cannot determine that "Salt Creek" is a more appropriate name for the proposed AVA than "Van Duzer Corridor."

Another comment asked if the word "corridor" could be omitted from the AVA name when used as an appellation of origin on wine labels. Section 9.12(a)(1) requires an AVA name to be supported by evidence of current use of the name to refer to the region. Because neither the commenter nor the petitioner provided name evidence that the area is simply known as "Van Duzer," TTB cannot determine if "Van Duzer," standing alone, would be an appropriate alternative name for the proposed AVA. As a result, TTB would only allow the full AVA name "Van Duzer Corridor" to be used as an appellation of origin on a wine label once the proposed AVA is established. However, TTB did not propose to designate the phrase "Van Duzer" as a term of viticultural significance with respect to this proposed AVA, since doing so could have an adverse effect on current labels that use "Van Duzer" as part of a brand name. Therefore, if the proposed AVA is established, the phrase "Van Duzer" (without the word

"corridor") may be used as a brand name or as part of a brand name on wine labels without having to meet the appellation of origin eligibility requirements for the Van Duzer Corridor viticultural area.

#### Clarification of the Eola-Amity Hills AVA Boundary Description

Because one of the established Eola-Amity Hills AVA boundaries is concurrent with the boundary of the proposed Van Duzer Corridor AVA, TTB also proposed in Notice No. 175 to clarify the description of portions of the Eola-Amity Hills AVA boundary. The clarifications were proposed to correct errors in the current description of the boundary. TTB received no comments on the proposed boundary clarifications during the public comment period for Notice No. 175. Therefore, TTB is proceeding with clarifying the description of the Eola-Amity Hills AVA boundary in this document.

The first boundary clarification concerns the description of the beginning point of the AVA boundary. The Eola-Amity Hills AVA boundary description shall now begin at the intersection of State Highway 22 and Rickreall Road instead of the intersection of State Highway 22 and 223, which is located west of the town of Rickreall, Oregon. TTB believes the erroneous description of the Eola-Amity Hills boundary beginning point resulted from a misreading of the markings for State Highway 223 on the Rickreall, Oregon map. TTB also believes that Oregon wine industry members always have understood the Eola-Amity Hills AVA boundary to begin at the intersection of State Highway 22 rather than at the currently-described beginning point. TTB notes that commercially-produced maps of the Eola-Amity Hills AVA show its boundary located at the intersection of State Highway 22 and Rickreall Road. For example, see the Eola-Amity Hills AVA maps posted at <http://eolaamityhills.com/explore-our-region/regional-map/> and <http://www.everyvine.com/wine-regions/region/Eola-Amity-Hills/>.

Additionally, TTB is further amending the Eola-Amity Hills boundary descriptions for clarity. TTB is removing the word "township" from "township of Bethel" to add a more precise description of the point where the AVA's boundary intersects the 200-foot contour line, and to minimize confusion since Bethel appears on the Amity, Oregon Map as the name of a crossroads, not as the name of a political or geographic township. TTB is also clarifying the direction in which the



Eola-Amity Hills AVA boundary proceeds along the 200-foot contour line from Oak Grove Road, to clarify the point at which that contour line intersects Zena Road, and to clarify that the boundary follows Zena Road for a short distance to its intersection with Oak Grove Road south of Bethel. TTB is also clarifying that the AVA boundary follows Frizzell Road to the road's first intersection with the 200-foot contour line. Lastly, TTB is clarifying that, in returning to the AVA's boundary's beginning point, the boundary crosses from the Amity, Oregon map onto the Rickreall, Oregon map. TTB believes the correction and clarifications will not affect the ability of any bottler to use the Eola-Amity Hills AVA name on a wine label.

#### TTB Determination

After careful review of the petition and the comments received in response to Notice No. 175, TTB finds that the evidence provided by the petitioner supports the establishment of the Van Duzer Corridor AVA. Accordingly, under the authority of the FAA Act, section 1111(d) of the Homeland Security Act of 2002, and part 4 of the TTB regulations, TTB establishes the "Van Duzer Corridor" AVA in portions of Yamhill and Polk Counties, Oregon, effective 30 days from the publication date of this document.

TTB has also determined that the Van Duzer Corridor AVA will remain part of the established Willamette Valley AVA. As discussed in Notice No. 175, the proposed Van Duzer Corridor shares some broad characteristics with the established AVA. For example, elevations within the proposed AVA are below 1,000 feet, and the soils are primarily silty loams and clay loams. However, the proposed Van Duzer Corridor AVA's location at the eastern end of the only wind gap in the portion of the Coastal Ranges that borders the Willamette Valley AVA creates a unique microclimate with persistently high wind speeds and lower growing degree day accumulations. The grapes grown in the proposed AVA have different physical characteristics, such as thicker grape skins, and maturation rates than the same varieties grown in other parts of the Willamette Valley AVA.

#### Boundary Description

See the narrative description of the boundary of the Van Duzer Corridor AVA in the regulatory text published at the end of this final rule.

#### Maps

The petitioner provided the required maps, and they are listed below in the regulatory text.

#### Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. For a wine to be labeled with an AVA name or with a brand name that includes an AVA name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible for labeling with an AVA name and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the AVA name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Different rules apply if a wine has a brand name containing an AVA name that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

With the establishment of this AVA, its name, "Van Duzer Corridor" will be recognized as a name of viticultural significance under § 4.39(i)(3) of the TTB regulations (27 CFR 4.39(i)(3)). The text of the regulation clarifies this point. Consequently, wine bottlers using the name "Van Duzer Corridor" in a brand name, including a trademark, or in another label reference as to the origin of the wine, will have to ensure that the product is eligible to use the AVA name as an appellation of origin. TTB is not designating the phrase "Van Duzer" as a term of viticultural significance, in order to avoid a potential negative effect on current labels that use "Van Duzer" as part of a brand name on wine labels. Therefore, if the proposed AVA is established, the phrase "Van Duzer" (without the word "corridor") may be used as a brand name or as part of a brand name on wine labels without having to meet the appellation of origin eligibility requirements for the Van Duzer Corridor viticultural area.

The establishment of the Van Duzer Corridor AVA will not affect any existing AVA, and any bottlers using "Willamette Valley" as an appellation of origin or in a brand name for wines made from grapes grown within the Willamette Valley AVA will not be affected by the establishment of this new AVA. The establishment of the Van Duzer Corridor AVA will allow vintners

to use "Van Duzer Corridor" and "Willamette Valley" as appellations of origin for wines made primarily from grapes grown within the Van Duzer Corridor AVA if the wines meet the eligibility requirements for the appellation.

#### Regulatory Flexibility Act

TTB certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of an AVA name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

#### Executive Order 12866

It has been determined that this final rule is not a significant regulatory action as defined by Executive Order 12866 of September 30, 1993. Therefore, no regulatory assessment is required.

#### Drafting Information

Kaori Flores of the Regulations and Rulings Division drafted this final rule.

#### List of Subjects in 27 CFR Part 9

Wine.

#### The Regulatory Amendment

For the reasons discussed in the preamble, TTB amends title 27, chapter I, part 9, Code of Federal Regulations, as follows:

#### PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

#### Subpart C—Approved American Viticultural Areas

■ 2. Amend § 9.202 by revising paragraphs (c)(1), (12), (13), (15), and (16) to read as follows:

##### § 9.202 Eola-Amity Hills.

\* \* \* \* \*

(c) \* \* \*

(1) The beginning point is on the Rickreall, Oregon, map at the intersection of State Highway 22 and Rickreall Road, near the Oak Knoll Golf Course, in section 50, T7S, R4W;

\* \* \* \* \*

(12) Follow Old Bethel Road, which becomes Oak Grove Road, south until the road intersects the 200-foot contour line approximately 400 feet north of Oak Grove Road's northern intersection with



Zena Road, just northwest of Bethel; then

(13) Follow the 200-foot contour line easterly and then southerly until its first intersection with Zena Road, and then follow Zena Road west approximately 0.25 mile to its southern intersection with Oak Grove Road, south of Bethel; then

\* \* \* \* \*

(15) Follow Frizzell Road west for approximately 0.25 mile to its first intersection with the 200-foot contour line, then

(16) Follow the 200-foot contour line generally south, crossing onto the Rickreall, Oregon, map, until the contour line intersects the beginning point.

■ 3. Subpart C is amended by adding § 9.265 to read as follows:

#### § 9.265 Van Duzer Corridor.

(a) *Name.* The name of the viticultural area described in this section is “Van Duzer Corridor”. For purposes of part 4 of this chapter, “Van Duzer Corridor” is a term of viticultural significance.

(b) *Approved maps.* The five United States Geological Survey (USGS) 1:24,000 scale topographic maps used to determine the boundary of the Van Duzer Corridor viticultural area are titled:

(1) Sheridan, Oreg., 1956; revised 1992;

(2) Ballston, Oreg., 1956; revised 1992;

(3) Dallas, Oreg., 1974; photorevised 1986;

(4) Amity, Oreg., 1957; revised 1993; and

(5) Rickreall, Oreg., 1969; photorevised 1976;

(c) *Boundary.* The Van Duzer Corridor viticultural area is located in Polk and Yamhill Counties, in Oregon. The boundary of the Van Duzer Corridor viticultural area is as described below:

(1) The beginning point is on the Sheridan map at the intersection of State Highway 22 and Red Prairie Road. From the beginning point, proceed southeasterly along State Highway 22 for a total of 12.4 miles, crossing over the Ballston and Dallas maps and onto the Rickreall map, to the intersection of the highway with the 200-foot elevation contour west of the Oak Knoll Golf Course; then

(2) Proceed north on the 200-foot elevation contour, crossing onto the Amity map, to the third intersection of the elevation contour with Frizzell Road; then

(3) Proceed east on Frizzell Road for 0.3 mile to the intersection of the road with Oak Grove Road; then

(4) Proceed north along Oak Grove Road for 1.7 miles to the intersection of the road with Zena Road; then

(5) Proceed east on Zena Road for approximately 0.25 mile to the second intersection of the road with the 200-foot elevation contour; then

(6) Proceed northwest along the 200-foot elevation contour to the intersection of the elevation contour with Oak Grove Road; then

(7) Proceed north along Oak Grove Road (which becomes Old Bethel Road) approximately 7.75 miles to the intersection of the road with Patty Lane; then

(8) Proceed west in a straight line for a total of 10.8 miles, crossing over the Ballston map and onto the Sheridan map, to the intersection of the line with State Highway 18; then

(9) Proceed southwest along State Highway 18 for 0.3 miles to the intersection of the highway with Red Prairie Road; then

(10) Proceed south along Red Prairie Road for approximately 5.3 miles, returning to the beginning point.

Signed: October 9, 2018.

**John J. Manfreda,**  
*Administrator.*

Approved: December 4, 2018.

**Timothy E. Skud,**  
*Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).*

[FR Doc. 2018–27017 Filed 12–13–18; 8:45 am]

**BILLING CODE 4810–31–P**

## PENSION BENEFIT GUARANTY CORPORATION

### 29 CFR Parts 4022 and 4044

#### Allocation of Assets in Single-Employer Plans; Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Pension Benefit Guaranty Corporation’s regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans to prescribe interest assumptions under the benefit payments regulation for valuation dates in January 2019 and interest assumptions under the asset allocation regulation for valuation dates in the first quarter of 2019. The interest assumptions are used for valuing and paying benefits under terminating single-employer plans covered by the

pension insurance system administered by PBGC.

**DATES:** Effective January 1, 2019.

#### FOR FURTHER INFORMATION CONTACT:

Melissa Rifkin ([rifkin.melissa@PBGC.gov](mailto:rifkin.melissa@PBGC.gov)), Attorney, Regulatory Affairs Division, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005, 202–326–4400, ext. 6563. (TTY users may call the Federal relay service toll free at 1–800–877–8339 and ask to be connected to 202–326–4400, ext. 6563.)

**SUPPLEMENTARY INFORMATION:** PBGC’s regulations on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) and Benefits Payable in Terminated Single-Employer Plans (29 CFR part 4022) prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits under terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974 (ERISA). The interest assumptions in the regulations are also published on PBGC’s website (<http://www.pb.gc.gov>).

The interest assumptions in appendix B to part 4044 are used to value benefits for allocation purposes under ERISA section 4044. PBGC uses the interest assumptions in appendix B to part 4022 to determine whether a benefit is payable as a lump sum and to determine the amount to pay. Appendix C to part 4022 contains interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using PBGC’s historical methodology. Currently, the rates in appendices B and C of the benefit payment regulation are the same.

The interest assumptions are intended to reflect current conditions in the financial and annuity markets. Assumptions under the asset allocation regulation are updated quarterly; assumptions under the benefit payments regulation are updated monthly. This final rule updates the benefit payments interest assumptions for January 2019 and updates the asset allocation interest assumptions for the first quarter (January through March) of 2019.

The first quarter 2019 interest assumptions under the allocation regulation will be 3.09 percent for the first 20 years following the valuation date and 2.84 percent thereafter. In comparison with the interest assumptions in effect for the fourth quarter of 2018, these interest assumptions represent no change in the select period (the period during which the select rate (the initial rate) applies), an increase of 0.25 percent in the select

rate, and an increase of 0.08 percent in the ultimate rate (the final rate).

The January 2019 interest assumptions under the benefit payments regulation will be 1.50 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. In comparison with the interest assumptions in effect for December 2018, these interest assumptions represent no change in the immediate rate and no changes in  $i_1$ ,  $i_2$ , or  $i_3$ .

PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect current market conditions as accurately as possible.

Because of the need to provide immediate guidance for the valuation and payment of benefits under plans with valuation dates during January 2019, PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

#### List of Subjects

##### 29 CFR Part 4022

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

##### 29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

#### PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

- 1. The authority citation for part 4022 continues to read as follows:

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

- 2. In appendix B to part 4022, Rate Set 303 is added at the end of the table to read as follows:

##### Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

\* \* \* \* \*

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)					
	On or after	Before		$i_1$	$i_2$	$i_3$	$n_1$	$n_2$	
*	*		*	*	*	*		*	
303	1–1–19	2–1–19	1.50	4.00	4.00	4.00	7	8	

- 3. In appendix C to part 4022, Rate Set 303 is added at the end of the table to read as follows:

##### Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments

\* \* \* \* \*

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)					
	On or after	Before		$i_1$	$i_2$	$i_3$	$n_1$	$n_2$	
*	*		*	*	*	*		*	
303	1–1–19	2–1–19	1.50	4.00	4.00	4.00	7	8	

#### PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

- 4. The authority citation for part 4044 continues to read as follows:

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

- 5. In appendix B to part 4044, an entry for "January–March 2019" is added at the end of the table to read as follows:

##### Appendix B to Part 4044—Interest Rates Used to Value Benefits

\* \* \* \* \*

For valuation dates occurring in the month—			The values of $i_t$ are:					
			$i_t$	for $t =$	$i_t$	for $t =$	$i_t$	for $t =$
*	*	*	*	*	*	*	*	*
January–March 2019	.....		0.0309	1–20	0.0284	>20	N/A	N/A

Issued in Washington, DC.

**Hilary Duke,**

*Assistant General Counsel, Pension Benefit Guaranty Corporation.*

[FR Doc. 2018-26849 Filed 12-13-18; 8:45 am]

BILLING CODE 7709-02-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2018-0490; FRL-9987-81-Region 3]

#### Air Plan Approval; Maryland; Continuous Opacity Monitoring Requirements for Municipal Waste Combustors and Cement Plants

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the State of Maryland (SIP Revision 16-04). This revision pertains to clarifying continuous opacity monitoring requirements and visible emission standards for municipal waste combustors (MWCs) and Portland cement plants. This action is being taken under the Clean Air Act (CAA).

**DATES:** This final rule is effective on January 14, 2019.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2018-0490. All documents in the docket are listed on the <http://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <http://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Maria A. Pino, (215) 814-2181, or by email at [pino.maria@epa.gov](mailto:pino.maria@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On August 23, 2018 (83 FR 42624), EPA published a notice of proposed rulemaking (NPRM) for the State of Maryland. In the NPRM, EPA proposed approval of a revision to Maryland's SIP

to clarify visible emissions (VE) and continuous opacity monitor (COM) requirements for MWCs and Portland cement plants. The formal SIP revision (SIP Revision 16-04) was submitted by Maryland on May 10, 2016. On February 28, 2018, the Maryland Department of the Environment (MDE) Secretary Ben Grumbles submitted a clarification letter to EPA Regional Administrator Cosmo Servidio, withdrawing definitions for continuous burning and operating time, COMAR 26.11.01.01B(8-1) and (27-1), respectively, from SIP Revision 16-04. These definitions are no longer part of SIP Revision 16-04 and are not pending before EPA.

##### II. Summary of SIP Revision and EPA Analysis

The SIP revision consisted of revisions to COMAR 26.11.01.10, Continuous Opacity Monitoring Requirements. Under COMAR 26.11.01.10A, Applicability and Exceptions, MDE added a new section, COMAR 26.11.01.10A(6), regarding requirements for alternative visible emissions limits. Under COMAR 26.11.01.10B, General Requirements for COMs, MDE amended COMAR 26.11.01.10B(3) to clarify that a COM must comply with the applicable requirements in 40 CFR part 51, appendix P in its entirety. Also under COMAR 26.11.01.10B, MDE added new sections COMAR 26.11.01.10B(5) and 26.11.01.10B(6) to clarify COM requirements for the owners and operators of cement kilns and clinker coolers that are operating COMs and the owners and operators of MWCs that are required to install and operate COMs, respectively. MDE repealed 26.11.01.10F, regarding redundant COMs requirements for fuel burning equipment, and is requesting its removal from the SIP. Finally, MDE amended COMAR 26.11.08, Control of Incinerators, to add a new section D to regulation .04, Visible Emissions.

EPA evaluated these amendments and found that they help to clarify requirements for COMs. Therefore, they are approvable. Other specific requirements of Maryland's SIP Revision 16-04 and the rationale for EPA's proposed action are explained in the NPRM and will not be restated here.

##### III. Summary of Public Comments and EPA Responses

On September 1, 2018, EPA received adverse comments from one anonymous commenter.

**Comment:** The commenter observed that in the docket for this rulemaking, Docket ID No. EPA-R03-OAR-2018-0490, at <http://www.regulations.gov>,

Maryland's February 28, 2018 withdrawal letter looked incomplete.

**EPA Response:** Upon receipt of the comment, EPA checked and confirmed that the second page of the letter was inadvertently excluded from the docket. EPA notes that the substance of the letter was contained in the first page of the letter, which was included in the docket. The first page explained that Maryland was withdrawing the definitions of continuous burning and operating time from EPA's consideration as SIP revisions.

"The purpose of this letter is to request a clarification to the Maryland SIP Rev #16-04, to withdraw two definitions under COMAR 26.11.01.01 Definitions from EPA's consideration. Please remove the following two definitions from EPA's consideration for inclusion into Maryland's SIP as part of SIP Rev #16-04:

- COMAR 26.11.01.01.8:
1. (8-1) Continuous Burning
2. (27-1) Operating Time"

The omitted second page contained only the following closing language:

"... SIP submittal (enclosed) is an exact duplicate of the official hard copy. If you have any questions concerning this SIP action, please feel free to call me at (410) 537-3084 or Mr. George (Tad) S. Aburn, Jr., Director of the Air and Radiation Administration, at 410-537-3255.

Sincerely, Ben Grumbles, Secretary.

Enclosure

cc: Mr. George (Tad) S. Aburn Jr., Director, Air and Radiation Administration; Ms. Cristina Fernandez, Director, Air Protection Division, EPA Region III"

Although all the relevant substantive information was contained in the first page of the letter, which was included in the docket, EPA rectified the omission as quickly as possible. EPA posted Maryland's complete two-page letter, dated February 28, 2018, to Docket ID No. EPA-R03-OAR-2018-0490, at <http://www.regulations.gov>, on September 4, 2018. The public comment period ran from August 23, 2018 until September 24, 2018.

**Comment:** The commenter also stated that EPA's NPRM was hard to understand, writing, "I can't follow which COMAR applies to what COMAR because of what redundancies, changes, or what have you."

**EPA Response:** There were numerous changes discussed in EPA's August 23, 2018 NPRM, which readers may find hard to follow. However, in section II of the NPRM, Summary of SIP Revision and EPA Analysis, EPA set out a section by section accounting of the proposed changes to Maryland's SIP. In addition, in Docket ID No. EPA-R03-OAR-2018-0490, at <http://www.regulations.gov>, there are numerous documents that are part of Maryland's SIP Revision

submittal, which help to clarify the exact COMAR changes. These

documents include the following attachments to document number EPA–

R03–OAR–2018–0490–0002, which is Maryland’s SIP revision submittal letter.

Document number/title	Explanation
3a–original COMAR eff VE Incinerator SIP 16–04 .....	Current Effective COMAR text per MDE as of last action final effective 2/15/16; COMAR 26.11.08—Control of Incinerators—.04 ONLY.
3a–updated COMAR eff text with notes SIP 16–04 Rev_02092018 .....	Current Effective COMAR text, as approved after SIP 15–05 including SIP 15–04 with MDE notes; MDE proposed clarification to SIP 16–04 on 02/09/2018.
3b–updated COMAR eff text SIP 16–04 Rev_02092018clean .....	Current Effective COMAR text, as approved after SIP 15–05 including SIP 15–04 with MDE proposed SIP Rev #16–04 clarification on 02/09/2018.
3b–original COMAR eff text 26.11.01_.10 SIP16–04_042816 .....	Current Effective COMAR text per MDE as of last action final effective 2/15/16; COMAR 26.11.01.01 & .10.
4a–original Notice of Final Action_02052016.docx .....	Maryland Register, volume 43, issue 3, Friday, February 5, 2016, notice of final action.
4b–Updated Notice of Final Action, definitions withdrawn .....	Maryland register, volume 43, issue 3, Friday, February 5, 2016, notice of final action, with references to withdrawn definitions for continuous burning and operating time, COMAR 26.11.01.01B(8–1) and (27–1), removed.
5a–original Notice of Proposed Action_11.13.15 .....	Maryland Register, volume 42, issue 23, Friday, November 13, 2015, notice of proposed action.
5b–Updated Notice of Proposed Action, Definitions withdrawn .....	Maryland register, volume 42, issue 23, Friday, November 13, 2015, notice of proposed action with withdrawn definitions for continuous burning and operating time, COMAR 26.11.01.01B(8–1) and (27–1), removed.

These regulatory changes are also described in the amendments to 40 CFR part 52 set forth in this final rulemaking action.

#### IV. Final Action

EPA is approving Maryland’s May 10, 2016 SIP Revision 16–04, except for the definitions of continuous burning and operating time that MDE withdrew from SIP Revision 16–04 on February 28, 2018, as a revision to the Maryland SIP. These revisions consist of amendments to Regulation .10 under COMAR 26.11.01, General and Administrative Provisions, and Regulation .04 under COMAR 26.11.08, Control of Incinerators, in Maryland’s SIP Revision 16–04, related to COMs and VE requirements for cement plants and MWCs.

#### V. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of MDE’s amendments to Regulation .10 under COMAR 26.11.01, General and Administrative Provisions, and Regulation .04 under COMAR 26.11.08, Control of Incinerators, contained in SIP Revision 16–04. As described previously, the amendments to COMAR 26.11.01.10, Continuous Opacity Monitoring Requirements, are as follows: (1) Add a new section 6 to COMAR 26.11.01.10A, Applicability and Exceptions; (2) amend section 3 under COMAR 26.11.01.10B, General Requirements for COMs; (3) add new

sections 5 and 6 under COMAR 26.11.01.10B; and (4) remove COMAR 26.11.01.10F, which has been repealed by the State. The amendment to COMAR 26.11.08, Control of Incinerators, consists of an addition of a new section D to Regulation .04, Visible Emissions. These regulatory changes are described in the amendments to 40 CFR part 52 set forth in this final rulemaking action. EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region III Office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully Federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA’s approval, and will be incorporated by reference in the next update to the SIP compilation.<sup>1</sup>

#### VI. Statutory and Executive Order Reviews

##### A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices,

provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

<sup>1</sup> 62 FR 27968 (May 22, 1997).

• Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

#### *B. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a

copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

#### *C. Petitions for Judicial Review*

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 12, 2019. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving Maryland SIP Revision 16–04, COMs requirements for MWCs and Cement Plants, may not be challenged

later in proceedings to enforce its requirements. (See section 307(b)(2)).

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: November 30, 2018.

**Cosmo Servidio,**

*Regional Administrator, Region III.*

40 CFR part 52 is amended as follows:

#### **PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

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

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

#### **Subpart V—Maryland**

■ 2. In § 52.1070, the table in paragraph (c) is amended by revising the entries “26.11.01.10” and “10.18.08/26.11.08.04” to read as follows:

#### **§ 52.1070 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

#### **EPA-APPROVED REGULATIONS, TECHNICAL MEMORANDA, AND STATUTES IN THE MARYLAND SIP**

Code of Maryland Administrative Regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.1100
<b>26.11.01 General Administrative Provisions</b>				
26.11.01.10	Continuous Opacity Monitoring Requirements.	2/15/2016	12/14/2018, [insert <b>Register</b> citation].	<b>Federal</b> 1. Add new subsections A(6), B(5) and B(6). 2. Revise subsection B(3). 3. Remove subsection F. Previous approval 3/28/2018 (83 FR 13193).
<b>10.18.08/26.11.08 Control of Incinerators</b>				
10.18.08/26.11.08.04	Visible Emissions	2/15/2016	12/14/2018, [insert <b>Register</b> citation].	<b>Federal</b> Add new subsection D. Previous approval 8/1/2007 (72 FR 41891).

\* \* \* \* \*

[FR Doc. 2018–27049 Filed 12–13–18; 8:45 am]

BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Parts 52 and 70****[EPA–R04–OAR–2018–0296; FRL–9987–13–Region 4]****Air Plan and Operating Permit Program Approval: AL, GA and SC; Revisions to Public Notice Provisions in Permitting Programs****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving portions of State Implementation Plan (SIP) revisions and the Title V Operating Permit Program revisions submitted on May 19, 2017, by the State of Alabama, through the Alabama Department of Environmental Management (ADEM); submitted on November 29, 2017, by the State of Georgia, through the Georgia Environmental Protection Division (Georgia EPD); and submitted on September 5, 2017, by the State of South Carolina, through the South Carolina Department of Health and Environmental Control (SC DHEC). These revisions address the public notice rule provisions for the New Source Review (NSR) and Title V Operating Permit programs (Title V) of the Clean Air Act (CAA or Act) that remove the mandatory requirement to provide public notice of a draft air permit in a newspaper and that allow electronic notice (“e-notice”) as an alternate noticing option. EPA is approving these revisions pursuant to the CAA and implementing federal regulations.

**DATES:** This rule is effective January 14, 2019.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2018–0296. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) website. Although listed in the index, some information may not be publicly available, *i.e.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at

the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office’s official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Ms. Kelly Fortin of the Air Permitting Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Ms. Fortin can be reached by telephone at (404) 562–9117 or via electronic mail at [fortin.kelly@epa.gov](mailto:fortin.kelly@epa.gov).

**SUPPLEMENTARY INFORMATION:****I. Background**

In a notice of proposed rulemaking (NPRM) published on August 10, 2018 (83 FR 39638), EPA proposed to approve the portions of Alabama’s May 19, 2017, Georgia’s November 29, 2017, and South Carolina’s September 5, 2017, SIP revisions and the Title V program revisions addressing the public notice requirements for CAA permitting. The details of Alabama’s, Georgia’s, and South Carolina’s submittals and the rationale for EPA’s actions are explained in the NPRM and briefly summarized below. The comment period for the proposed rule closed on September 10, 2018, and EPA did not receive any adverse comments.

On October 5, 2016, EPA finalized revised public notice rule provisions for the NSR, Title V, and Outer Continental Shelf permitting programs of the CAA. See 81 FR 71613 (October 18, 2016). These rule revisions remove the mandatory requirement to provide public notice of a draft air permit through publication in a newspaper and allow for internet e-notice as an option for permitting authorities implementing their own EPA-approved SIP rules and Title V rules, such as the Alabama, Georgia, and South Carolina EPA-approved programs. Permitting authorities are not required to adopt e-notice. Nothing in the final rules prevents a permitting authority of an EPA-approved permitting program from continuing to use newspaper notification and/or from supplementing e-notice with newspaper notification and/or additional means of notification.

When e-notice is provided, EPA’s rule requires electronic access (e-access) to the draft permit. Generally, state and local agencies intend to post the draft permits and public notices in a designated location on their agency websites. For the noticing of draft permits issued by permitting authorities with EPA-approved programs, the rule requires the permitting authority to use “a consistent noticing method” for all permit notices under the specific permitting program.

Alabama revised Chapter 335–3–14, *Air Permits* and Chapter 335–3–15, *Synthetic Minor Operating Permits*, and Chapter 335–3–16, *Major Source Operating Permits*, to incorporate EPA’s amendments to the federal public notice regulations discussed above.

Georgia revised Rule 391–3–1–.02(7)(a)1, *Prevention of Significant Deterioration of Air Quality*, and Rule 391–3–1–.03(10), *Title V Operating Permits*, of *Georgia’s Rules for Air Quality Control*, Chapter 391–3–1, to incorporate EPA’s amendments to the federal public notice regulations, as discussed above.

South Carolina revised Regulation 61–62.5, Standard No. 7, *Prevention of Significant Deterioration*, and Regulation 61–62.70, *Title V Operating Permit Program* of the *South Carolina Air Pollution Control Regulations and Standards*, to incorporate EPA’s amendments to the federal public notice regulations discussed above.

**II. Incorporation by Reference**

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of Alabama’s Chapter 335–3–14, “Air Permits” at 335–3–14–.01, .04, and .05 and Chapter 335–3–15 “Synthetic Minor Operating Permits” at 335–3–15–.05, which address the public notice rule provisions for the NSR program, state effective December June 9, 2017; Georgia Rule 391–3–1–.02(7), *Prevention of Significant Deterioration of Air Quality*, which addresses the public notice rule provisions for the NSR program, state effective July 20, 2017; and South Carolina Regulation 61–62.5, Standard No. 7, “Prevention of Significant Deterioration,” which address the public notice rule provisions for the NSR program, state effective August 25, 2017.<sup>1</sup> EPA has

<sup>1</sup> EPA is taking this opportunity to make administrative corrections to the entries in the “Explanation” columns in 40 CFR 52.50(c) for Alabama Rule 335–3–14–.04; 40 CFR 52.570(c) for Georgia Rule 391–3–1–.02(7); and 40 CFR

made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.<sup>2</sup>

### III. Final Action

EPA is approving the portions of Alabama's May 19, 2017, Georgia's November 29, 2017, and South Carolina's September 5, 2017, SIP revisions and the Title V program revisions addressing the public notice requirements for CAA permitting. EPA has concluded that the States' submissions meet the plan revisions requirements of CAA section 110 and the SIP requirements of 40 CFR 51.161, 51.165, and 51.166, as well as the public notice and revisions requirements of 40 CFR 70.4 and 70.7.

### IV. Statutory and Executive Order Reviews

In reviewing SIP and Title V submissions, EPA's role is to approve such submissions, provided that they meet the criteria of the CAA and EPA's implementing regulations. These actions merely approve state law as meeting Federal requirements and do not impose additional requirements beyond those imposed by state law. For that reason, these actions:

- Are not significant regulatory actions subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Are not Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory actions because the actions are not significant under Executive Order 12866;
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having a significant economic impact on a substantial number of small entities

under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIPs subject to these actions, with the exception of the South Carolina SIP, are not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rules regarding SIPs do not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will they impose substantial direct costs on tribal governments or preempt tribal law. With respect to the South Carolina SIP, EPA notes that the Catawba Indian Nation Reservation is located within the boundary of York County, South Carolina, and pursuant to the Catawba Indian Claims Settlement Act, S.C. Code Ann. 27-16-120, "all state and local environmental laws and regulations apply to the Catawba Indian Nation and Reservation and are fully enforceable by all relevant state and local agencies and authorities." Thus, the South Carolina SIP applies to the Catawba Reservation; however, because the action related to South Carolina is merely modifying public notice provisions for certain types of air permits issued by SC DHEC, EPA has determined that there are no substantial direct effects on the Catawba Indian Nation. EPA has also determined that the action related to South Carolina's SIP will not impose any substantial direct costs on tribal governments or preempt tribal law.

Furthermore, the rules regarding Title V Operating Permit programs do not have tribal implications because they are not approved to apply to any source of air pollution over which an Indian Tribe has jurisdiction, nor will these rules impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 12, 2019. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

### List of Subjects

#### 40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

#### 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating Permits, Reporting and recordkeeping requirements.

Dated: November 15, 2018.

**Onis "Trey" Glenn, III,**

*Regional Administrator, Region 4.*

40 CFR part 52 is amended as follows:

52.1210(c) for South Carolina Regulation 61-62.5, Standard No. 7 to more clearly reflect the federally-approved versions of these rules in the states' respective SIPs.

<sup>2</sup> See 62 FR 27968 (May 22, 1997).

**PART 52—APPROVAL AND  
PROMULGATION OF  
IMPLEMENTATION PLANS**

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

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

**Subpart B—Alabama**

- 2. Section 52.50(c) is amended by:
- a. Revising under the heading “Chapter No. 335–3–14 Air Permits” the entries for “Section 335–3–14–.01”, “Section 335–3–14–.04”, “Section 335–3–14–.05”; and

- b. Revising under the heading “Chapter No. 335–3–15 Synthetic Minor Operating Permits” the entry for “Section 335–3–15–.05”
- The revisions read as follows:

**§ 52.50 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

**EPA-APPROVED ALABAMA REGULATIONS**

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	*
<b>Chapter No. 335–3–14 Air Permits</b>				
Section 335–3–14–.01 .....	General Provisions .....	6/9/2017	12/14/2018, [Insert citation of publication].	
* .....	*	*	*	*
Section 335–3–14–.04 .....	Air Permits Authorizing Construction in Clean Air Areas (Prevention of Significant Deterioration Permitting (PSD)).	6/9/2017	12/14/2018, [Insert citation of publication].	Except for changes to 335–3–14–.04(2)(g)2. and the addition of 335–3–14–.04(2)(bbb), state effective May 29, 2012, which EPA proposed to approve on August 24, 2017. Except for changes to 335–3–14–.04(2)(w)1., state effective July 11, 2006, which lists a 100 ton per year significant net emissions increase for regulated NSR pollutants not otherwise specified at 335–3–14–.04(2)(w). Except for the significant impact levels at 335–3–14–.04(10)(b) which were withdrawn from EPA consideration on October 9, 2014.
Section 335–3–14–.05 .....	Air Permits Authorizing Construction in or Near Non-attainment Areas.	6/9/2017	12/14/2018, [Insert citation of publication].	With the exception of: The portion of 335–3–14–.05(1)(k) stating “excluding ethanol production facilities that produce ethanol by natural fermentation”; and 335–3–14–.05(2)(c)3 (addressing fugitive emission increases and decreases). Also with the exception of the state-withdrawn elements: 335–3–14–.05(1)(h) (the actual-to-potential test for projects that only involve existing emissions units); the last sentence at 335–3–14–.05(3)(g), stating “Interpollutant offsets shall be determined based upon the following ratios”; and the NNSR interpollutant ratios at 335–3–14–.05(3)(g)1–4.
<b>Chapter No. 335–3–15 Synthetic Minor Operating Permits</b>				
* .....	*	*	*	*
Section 335–3–15–.05 .....	Public Participation .....	6/9/2017	12/14/2018, [Insert citation of publication].	
* .....	*	*	*	*

\* \* \* \* \*

**Subpart L—Georgia**

- 3. Section 52.570(c) is amended in the table by revising the entry for “391–3–1–.02(7)” to read as follows:

**§ 52.570 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

**EPA-APPROVED GEORGIA REGULATIONS**

State citation	Title/subject	State effective date	EPA approval date	Explanation
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## EPA-APPROVED GEORGIA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
391–3–1–.02(7) .....	Prevention of Significant Deterioration of Air Quality (PSD).	7/20/2017	12/14/2018, [Insert citation of publication].	Except 391–3–1–.02(7)(a)(2)(iv). See March 4, 2016 publication. The version of Georgia Rule 391–3–1–.02(7) in the SIP does not incorporate by reference: (1) The provisions amended in the Ethanol Rule to exclude facilities that produce ethanol through a natural fermentation process from the definition of “chemical process plants” in the major NSR source permitting program found at 40 CFR 52.21(b)(1)(i)(a) and (b)(1)(iii)(t), or (2) the provisions at 40 CFR 52.21(b)(2)(v) and (b)(3)(iii)(c) that were stayed indefinitely by the Fugitive Emissions Interim Rule, see March 30, 2011 publication.

\* \* \* \* \*

**Subpart PP—South Carolina**

■ 4. Section 52.2120(c), is amended in the table under “Regulation No. 62.5 Air

Pollution Control Standards” by revising the entry for “*Standard No. 7*” to read as follows:

**§ 52.2120 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

## AIR POLLUTION CONTROL REGULATIONS FOR SOUTH CAROLINA

State citation	Title/subject	State effective date	EPA approval date	Explanation
Regulation No. 62.5. <i>Standard No. 7</i> .....	Prevention of Significant Deterioration.	8/25/2017	12/14/2018, [Insert citation of publication].	EPA did not take action on the version of Regulation 61–62.5, Standard No. 7, paragraph (b)(32)(i)(a) state effective on December 27, 2013, included in a SIP revision submitted by the State on April 10, 2014, because this version contains changes to a phrase regarding ethanol production facilities that is not in the SIP. South Carolina submitted a SIP revision on April 14, 2009, that includes the phrase “except ethanol production facilities producing ethanol by natural fermentation under the North American Industry Classification System (NAICS) codes 325193 or 312140,” as amended in the Ethanol Rule (May 1, 2007), at Standard No. 7, paragraphs (b)(32)(i)(a), (b)(32)(iii)(b)(t), and (i)1(vii)(t) and at Standard No. 7.1, paragraphs (c)7(C)(xx) and (e)(T). EPA has not taken action to approve that portion of the April 14, 2009, SIP revision and incorporate this phrase into the SIP. The version of Standard No. 7, paragraphs (b)(32)(i)(a), (b)(32)(iii)(b)(t), and (i)1(vii)(t) and Standard No. 7.1, paragraphs (c)7(C)(xx) and (e)(T) was state effective on June 24, 2005 and conditionally approved by EPA on June 2, 2008, and were fully approved on June 23, 2011. Except Regulation 61–62.5, Standard No. 7(b)(30)(v) and (b)(34)(iii)(d), state effective June 26, 2015, which were withdrawn from EPA consideration on December 20, 2016. Except changes to Regulation 61–62.5, Standard No. 7(b)(34)(iii)(c), state effective June 26, 2015, which were withdrawn from EPA consideration on June 27, 2017. Except changes to 61–62.5, Standard No. 7(b)(34), (w)(1)–(3), (aa), and (bb), state effective August 25, 2017, which EPA proposed to approve on September 21, 2018.

\* \* \* \* \*

**PART 70—STATE OPERATING PERMIT PROGRAMS**

■ 5. The authority citation for part 70 continues to read as follows:

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

■ 6. Amend appendix A to part 70 by:

■ a. Adding paragraph (a)(3) under the heading “Alabama”;

■ b. Adding paragraph (d) under the heading “Georgia”; and

■ c. Adding paragraph (d) under the heading “South Carolina”.

The additions read as follows:

**Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs**

\* \* \* \* \*

**Alabama**

(a) \* \* \*

(3) Revisions to Alabama Chapter 335–3–16-.15(4), submitted on May 19, 2017, to allow for electronic noticing of operating permits, are approved on November 15, 2018.

\* \* \* \* \*

**Georgia**

\* \* \* \* \*

(d) Revisions to Georgia Rule 391–3–1-.03(10) submitted on November 29, 2017, to allow for electronic noticing of operating permits, are approved on November 15, 2018.

\* \* \* \* \*

**South Carolina**

\* \* \* \* \*

(d) Revisions to South Carolina Regulation 61–62.70, submitted on September 5, 2017, to allow for electronic noticing of operating permits, are approved on November 15, 2018.

\* \* \* \* \*

[FR Doc. 2018–26247 Filed 12–13–18; 8:45 am]

**BILLING CODE 6560–50–P**

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 261**

[EPA–R10–RCRA–2018–0538; FRL–9987–68–Region 10]

**Hazardous Waste Management System; Identifying and Listing Hazardous Waste Exclusion**

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) (also, “the Agency” in this preamble) is granting a petition submitted by Sandvik Special Metals (Sandvik), in Kennewick, Washington to exclude (or “delist”) up to 1,500 cubic yards of F006 wastewater treatment

sludge per year from the list of Federal hazardous wastes. The EPA has decided to grant the petition based on an evaluation of waste-specific information provided by Sandvik and a consideration of public comments received. This action conditionally excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when disposed of in a Subtitle D landfill permitted, licensed, or registered by a State. The rule also imposes testing conditions for waste generated in the future to ensure that this waste continues to qualify for delisting. Subject to state-only requirements within the State of Washington, or federally-authorized or state-only requirements in other states where the subject wastes may be disposed of, Sandvik’s petitioned waste may be disposed of in a Subtitle D landfill which is permitted, licensed, or registered by a State to manage municipal solid waste, or non-municipal non-hazardous waste.

**DATES:** This final rule is effective on December 14, 2018.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. [EPA–R10–RCRA–2018–0538]. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the RCRA Records Center, 16th floor, U.S. EPA, Region 10, 1200 6th Avenue, Suite 155, OAW–150, Seattle, Washington 98101. This facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The EPA recommends you telephone Dr. David Bartus at (206) 553–2804 before visiting the Region 10 office. The public may copy material from the regulatory docket at 15 cents per page.

**FOR FURTHER INFORMATION CONTACT:** Dr. David Bartus, EPA, Region 10, 1200 6th Avenue, Suite 155, OAW–150, Seattle, Washington 98070; telephone number: (206) 553–2804; email address: [bartus.dave@epa.gov](mailto:bartus.dave@epa.gov).

As discussed in Section V below, the Washington State Department of Ecology is evaluating Sandvik’s petition

under state authority. Information on Ecology’s action may be found at <https://fortress.wa.gov/ecy/publications/SummaryPages/1804023.html>.

**SUPPLEMENTARY INFORMATION:** The information in this section is organized as follows:

- I. Background
  - A. What is a delisting petition?
  - B. What regulations allow a waste to be delisted?
- II. Sandvik’s Petition
  - A. What waste did Sandvik petition EPA to delist?
  - B. What information was submitted in support of this petition?
- III. EPA’s Evaluation and Public Comments
  - A. What decision is EPA finalizing and why?
  - B. Public Comments Received and EPA’s Response
- IV. Final Rule
  - A. What are the terms of this exclusion?
  - B. When is the Delisting Effective?
  - C. How does this action affect the states?
- V. Statutory and Executive Order Reviews

**I. Background****A. What is a delisting petition?**

A delisting petition is a request from a generator to exclude waste from the list of hazardous wastes under RCRA regulations. In a delisting petition, the petitioner must show that waste generated at a particular facility does not meet any of the criteria for which EPA listed the waste as set forth in 40 CFR 261.11 and the background document for the waste. In addition, a petitioner must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (that is, ignitability, reactivity, corrosivity, and toxicity) and must present sufficient information for us to decide whether factors other than those for which the waste was listed warrant retaining it as a hazardous waste. See 40 CFR 260.22, Section 3001(f) of RCRA, 42 U.S.C. 6921(f) and the background documents for a listed waste.

A generator of a waste excluded from the hazardous waste lists of 40 CFR part 261 subpart D remains obligated under RCRA to confirm that its waste remains nonhazardous based on the hazardous waste characteristics in order to continue to manage the waste as non-hazardous. See 40 CFR 260.22(c)(4).

**B. What regulations allow a waste to be delisted?**

Under 40 CFR 260.20, 260.22, and 42 U.S.C. 6921(f), facilities may petition the EPA to remove their wastes from hazardous waste storage and treatment requirements by excluding them from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. Specifically, 40 CFR 260.20 allows any

person to petition the Administrator to modify or revoke any provision of 40 CFR parts 260 through 266, 268, and 27340 CFR 260.22 provides a generator the opportunity to petition the Administrator to exclude a waste from the lists of hazardous wastes on a "generator specific" basis.

## II. Sandvik's Petition

### A. What waste did Sandvik petition EPA to delist?

On April 27, 2018, Sandvik petitioned the EPA to exclude an annual volume of up to 1,500 cubic yards of F006 wastewater treatment sludges generated at its facility located in Kennewick, Washington from the list of hazardous wastes contained in 40 CFR 261.31. F006 is defined in 40 CFR 261.31 as "Wastewater treatment sludges from electroplating operations . . ." Sandvik claims that the petitioned waste does not meet the criteria for which F006 was listed (*i.e.*, cadmium, hexavalent chromium, nickel and complexed cyanide) and that there are no other factors which would cause the waste to be a hazardous waste.

### B. What information was submitted in support of this petition?

Sandvik conducted a detailed chemical analysis of their WWTF sludge according to a written sampling and analysis plan (SAP), provided as Attachment 2 to the delisting petition. Sandvik also asserted in its analysis that its waste does not meet the criteria for which F006 waste was listed and there are no other factors that might cause the waste to be a hazardous waste.

To support its assertion that the waste should be excluded, Sandvik collected numerous samples of the waste for analysis as documented in the preamble to the EPA's proposed delisting rulemaking. The EPA assessed Sandvik's data presented in the petition with respect to its intended use, and found the data were of sufficient quality and quantity to satisfy delisting decision criteria.

## III. EPA's Evaluation and Public Comments

### A. What decision is EPA finalizing and why?

Today the EPA is finalizing an exclusion for up to 1,500 cubic yards of wastewater treatment sludge generated annually at the Sandvik facility in Kennewick, Washington. Sandvik petitioned EPA to exclude, or delist, the wastewater treatment sludge because Sandvik believed that the petitioned waste does not meet the criteria for which it was listed and that there are no

additional constituents or factors which could cause the waste to be a hazardous waste. Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2) through (4).

The EPA proposed on September 12, 2018 (83 FR 46126) to exclude or delist the wastewater treatment sludge generated at Sandvik's facility from the list of hazardous wastes in 40 CFR 261.31 and accepted public comment on the proposed rulemaking. The EPA considered all comments received, and for reasons stated in both the proposal and this document, has determined that the wastewater treatment sludge from Sandvik's facility should be excluded from hazardous waste control.

### B. Public Comments Received and EPA's Response

The EPA received six public comments on the proposed rulemaking. Three of these comments supported the EPA's proposed exclusion (comments 0020, 0021 and 0023). Comment 0020 did raise a concern regarding the effect of the proposed delisting on residents of Kennewick. The EPA appreciates this concern, noting that the analysis supporting the proposed exclusion clearly documents that management of Sandvik's waste under the exclusion will be fully protective of residents both Kennewick, Washington and any solid waste landfill that may receive Sandvik's delisted waste. Comment 21 suggested that annual verification sampling and analysis could be done more frequently. Based on documentation provided by Sandvik regarding the highly-regulated nature of Sandvik's production process that is expected to result in the petitioned waste to remain largely consistent over time, the EPA does not believe that a requirement to perform verification sampling and analysis more frequently than annually is warranted.

One commenter (comment 0022) raised questions concerning glass recycling not relevant to the proposed exclusion.

Two comments recommended that the EPA perform additional analysis before finalizing the proposed exclusion.

Comment 0019 stated that more research is needed regarding the effects of arsenic groundwater contamination, and on the direction of groundwater from the receiving landfill. This commenter also requested that the sludge be tested for the characteristics of ignitability, reactivity and corrosivity. Sandvik used the Delisting Risk

Assessment Software (DRAS) model to develop and document compliance with delisting criteria on a constituent-specific basis, including arsenic. The DRAS model reflects established science and policy regarding multipath analysis including groundwater. The results of this modeling indicate to the EPA that no additional research is needed prior to finalization of the requested exclusion. Regarding the commenter's question regarding the direction of groundwater flow from the receiving landfill, EPA does not exercise direct control over a receiving landfill through the delisting process. Rather, the EPA specifies as a condition of this delisting that the receiving landfill be licensed, permitted, or otherwise authorized by a state as a municipal solid waste landfill subject to 40 CFR part 258, or non-municipal, non-hazardous industrial waste landfill subject to 40 CFR 257.5 through 257.30. The EPA has added clarifying language to this effect in Condition 2 of this exclusion. This ensures that questions such as the direction of groundwater flow and appropriate groundwater monitoring of the receiving landfill are appropriately considered through state approval of the receiving landfill. The EPA has determined that this approach is fully protective of human health and the environment with respect to the receiving landfill's acceptance of wastes excluded under today's action. Finally, Federal delisting regulations clearly state that candidate wastes cannot exhibit a hazardous characteristic. Sandvik's petition documents compliance with this requirement based on data characterizing the waste as of the date of Sandvik's petition, and conditions of the final exclusion ensure future compliance with this requirement.

Comment 24 stated that the proposed rule should not go into effect without an independent evaluation of the waste water sought to be excluded, and that it is inappropriate to rely on the evaluation of the petitioner alone. The EPA has performed an extensive and detailed review of Sandvik's petition, providing exactly the independent analysis requested by the commenter. The EPA does not believe further independent analysis of Sandvik's petition is necessary or warranted.

The EPA also received comments from the Washington State Department of Ecology. In addition to editorial and clarification suggestions, Ecology requested more specific language regarding the scope of solid waste landfills eligible to receive wastes managed under this exclusion, and requested a condition be added requiring Sandvik to provide Ecology

with a copy of verification data generated pursuant to this exclusion. The EPA has included revised language that better defines those solid waste landfills eligible to receive wastes managed under this exclusion, and that requires Sandvik to provide Ecology with a copy of verification data.

#### IV. Final Rule

##### A. What are the terms of this exclusion?

Sandvik must dispose of this waste in a subtitle D landfill licensed, permitted or otherwise authorized by a state, and will remain obligated to verify that the waste meets the allowable concentrations set forth here. Sandvik must also continue to determine that the waste does not exhibit any of the characteristics of hazardous waste in 40 CFR part 261 subpart C. This exclusion applies only to a maximum annual volume of 1,500 cubic yards per calendar year and is effective only if all conditions contained in this rule are satisfied. Should Sandvik generate candidate wastes in excess of this quantity, they must be managed as hazardous waste. Sandvik may not apply such excess amount to the 1500 cubic yard limit of the following year.

##### B. When is the delisting effective?

This rule is effective December 14, 2018. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA, 42 U.S.C. 6930(b)(1), to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. This rule reduces rather than increases the existing requirements and, therefore, is effective immediately upon publication under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

##### C. How does this action affect the States?

Today's exclusion is being issued under the Federal RCRA delisting program. Therefore, only states subject to Federal RCRA delisting provisions would be affected. This exclusion is not effective in states that have received authorization to make their own delisting decisions. Also, the exclusion may not be effective in states having a dual system that includes Federal RCRA requirements and their own requirements. The EPA allows states to impose their own regulatory requirements that are more stringent than EPA's, under Section 3009 of RCRA. These more stringent requirements may include a provision that prohibits a federally issued exclusion from taking effect in the state.

As noted in the proposed rule preamble, the Washington State Department of Ecology is expected to make a parallel decision under their separate state authority. The EPA also notes that if Sandvik transports the petitioned waste to or manages the waste in any state with delisting authorization or their own state-only delisting requirements, it must obtain a delisting from that state before it can manage the waste as nonhazardous in that state. The EPA urges the petitioner to contact the state regulatory authority in each state to or through which it may wish to ship its waste to establish the status of its wastes under the state's laws.

#### V. Statutory and Executive Order Reviews

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

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

This action is exempt from review by the Office of Management and Budget because it is a rule of particular applicability, not general applicability. The action approves a delisting petition under RCRA for the petitioned waste at a particular facility.

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

This action is considered an Executive Order 13771 deregulatory action. This final rule provides meaningful burden reduction by allowing the petitioner to manage an estimated annual quantity of 1,500 cubic yards of residual solids a year under RCRA Subtitle D management standards rather than the more stringent RCRA Subtitle C standards. This action will significantly reduce the costs associated with the on-site management, transportation and disposal of this waste stream by shifting its management from RCRA Subtitle C hazardous waste management to RCRA Subtitle D nonhazardous waste management.

##### C. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it only applies to a particular facility.

##### D. Regulatory Flexibility Act

Because this rule is of particular applicability relating to a particular

facility, it is not subject to the regulatory flexibility provision of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

##### F. Unfunded Mandates Reform Act

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

##### G. Executive Order 13132: Federalism

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

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

This action does not have tribal implications as specified in Executive Order 13175. This action applies only to a particular facility on non-tribal land. Thus, Executive Order 13175 does not apply to this action.

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

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The health and safety risks of the petitioned waste were evaluated using the EPA's Delisting Risk Assessment Software (DRAS), which considers health and safety risks to children. Use of the DRAS is described in section III.E of the proposed delisting. The technical support document and the user's guide for DRAS are available at <https://www.epa.gov/hw/hazardous-waste-delisting-risk-assessment-software-dras>.

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

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

**K. National Technology Transfer and Advancement Act**

This action does not involve technical standards as described by the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note).

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

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The EPA has determined that this action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the

environment. The EPA's risk assessment, as described in section III.E in the proposed delisting, did not identify unacceptable risks from management of this material in an authorized or permitted RCRA Subtitle D solid waste landfill (e.g. municipal solid waste landfill or commercial/ industrial solid waste landfill). Therefore, the EPA believes that any populations in proximity of the landfills used by this facility should not be adversely affected by common waste management practices for this delisted waste.

**M. Congressional Review Act**

This action is exempt from the Congressional Review Act (5 U.S.C. 801 *et seq.*) because it is a rule of particular applicability.

**List of Subjects in 40 CFR Part 261**

Environmental protection; Hazardous waste, Recycling, and Reporting and recordkeeping requirements.

Dated: December 6, 2018.

**Lisa McArthur,**

*Acting Director, Office of Air and Waste.*

For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

**PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE**

■ 1. The authority citation for part 261 continues to read as follows:

**Authority:** 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

■ 2. Amend Table 1 of appendix IX to part 261 by adding the waste stream entry “Sandvik Special Metals” in alphabetical order by facility to read as follows:

**Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22**

TABLE 1—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	*
Sandvik Special Metals.	Kennewick, Washington.	<p>Wastewater treatment sludges, F006, generated at Sandvik Special Metals (Sandvik) facility in Kennewick, Washington at a maximum annual rate of 1,500 cubic yards per calendar year. The sludge must be disposed of in a landfill which is licensed, permitted, or otherwise authorized by a state to manage municipal solid waste subject to 40 CFR part 258, or non-municipal, non-hazardous industrial waste subject to 40 CFR 257.5 through 257.30. The exclusion becomes effective as of December 14, 2018.</p> <p>1. <i>Delisting Levels:</i> (A) The constituent concentrations in a representative sample of the waste must not exceed the following levels: Total concentrations (mg/kg): Arsenic—9,840; Cadmium—37,100; Chromium—77,500; Cobalt—103,000. TCLP Concentrations (mg/l in the waste extract): Arsenic—0.042; Barium—100; Cadmium—0.451; Chromium—5.00; Cobalt—1.06; Copper—120; Fluoride—194; Lead—2.95; Nickel—66.4; Silver—5.00; Vanadium—16.9; Zinc—992. (B) Sandvik must also demonstrate that the waste does not exhibit any hazardous waste characteristic in 40 CFR 261, Subpart C based on a representative sample of the waste.</p> <p>2. <i>Annual Verification Testing and Disposal:</i> To verify that the waste does not exceed the delisting concentrations specified in Sections 1.A and 1.B, Sandvik must collect and analyze one representative waste sample with coolant on an annual basis no later than each anniversary of the effective date of this delisting using methods with appropriate detection concentrations and elements of quality control. If both titanium and zirconium products have been in production and contributed to candidate wastes within the three-month period prior to each anniversary of the effective date of this delisting, samples of waste from both manufacturing processes must be collected for that verification period. Otherwise, sampling only of that material in production within the specified three-month period is required. Sampling and analytical data must be provided to the EPA, with a copy to the Washington State Department of Ecology, no later 60 days following each anniversary of the effective date of this delisting, or such later date as the EPA may agree to in writing. Sandvik must conduct all verification sampling and analysis according to a written sampling and analysis plan and associated quality assurance project plan that ensures analytical data are suitable for their intended use, which must be made available to the EPA upon request. Sandvik's annual submission must also include a certification that all wastes satisfying the delisting concentrations in Conditions 1.A and 1.B have been disposed of in a landfill which is licensed, permitted, or otherwise authorized by a state to manage municipal solid waste subject to 40 CFR part 258, or non-municipal, non-hazardous industrial waste subject to 40 CFR 257.5 through 257.30.</p> <p>3. <i>Changes in Operating Conditions:</i> Sandvik must notify the EPA in writing if it significantly changes the manufacturing process, the chemicals used in the manufacturing process, the treatment process, or the chemicals used in the treatment process. Sandvik must handle wastes generated after the process change as hazardous waste until it has demonstrated that the wastes continue to meet the delisting concentrations in sections 1.A and B, demonstrated that no new hazardous constituents listed in 40 CFR Part 261 Appendix VIII have been introduced into the manufacturing process or waste treatment process, and it has received written approval from the EPA that it may continue to manage the waste as non-hazardous waste.</p>

TABLE 1—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		<p>4. <i>Data Submittals</i>: Sandvik must submit the data obtained through verification testing or as required by other conditions of this rule to the Director, Office of Air and Waste, U.S. EPA Region 10, 1200 6th Avenue Suite 155, OAW-150, Seattle, Washington, 98070 or his or her equivalent. The annual verification data and certification of proper disposal must be submitted within 60 days after each anniversary of the effective date of this delisting exclusion, or such later date as the EPA may agree to in writing. Sandvik must compile, summarize, and maintain on-site for a minimum of five years, records of analytical data required by this rule, and operating conditions relevant to those data. Sandvik must make these records available for inspection. All data must be accompanied by a signed copy of the certification statement in 40 CFR 260.22(i)(12). If Sandvik fails to submit the required data within the specified time or maintain the required records on-site for the specified time, the EPA may, at its discretion, consider such failure a sufficient basis to reopen the exclusion as described in paragraph 5.</p> <p>5. <i>Reopener Language</i>—(A) If, any time after disposal of the delisted waste, Sandvik possesses or is otherwise made aware of any data relevant to the delisted waste indicating that any constituent is at a higher concentration than the specified delisting concentration or exhibits any of the characteristics of hazardous waste in 40 CFR part 261 Subpart C, then Sandvik must report such data, in writing, to the Director, Office of Air and Waste, EPA, Region 10, or his or her equivalent, within 10 days of first possessing or being made aware of that data, whichever is earlier.</p> <p>(B) Based on the information described in paragraph (A) and any other information received from any source, the EPA will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment.</p> <p>(C) If the EPA determines that the reported information requires it to act, the EPA will notify Sandvik in writing of the actions it believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing Sandvik with an opportunity to present information as to why the proposed EPA action is not necessary or to suggest an alternative action. Sandvik shall have 30 days from the date of the EPA's notice to present the information.</p> <p>(D) If after 30 days Sandvik presents no further information or after a review of any submitted information, the EPA will issue a final written determination describing the EPA actions that are necessary to protect human health or the environment. Any required action described in the EPA's determination shall become effective immediately unless the EPA provides otherwise.</p>
*	*	*

[FR Doc. 2018–27156 Filed 12–13–18; 8:45 am]

BILLING CODE 6560–50–P

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 660****[Docket No. 180207141–8999–02]****RIN 0648–BH74****Magnuson-Stevens Act Provisions;  
Fisheries Off West Coast States;  
Pacific Coast Groundfish Fishery;  
Groundfish Bottom Trawl and  
Midwater Trawl Gear in the Trawl  
Rationalization Program***Correction*

In rule document 2018–26194,  
appearing on pages 62269 through

62281, in the issue of Monday,  
December 3, 2018, make the following  
correction:

On page 62280, in the first column,  
instruction 11 should read, “11. In  
§ 660.333, revise paragraphs (b)(1),  
(c)(1), and (d)(1) to read as follows:”.

[FR Doc. C1–2018–26194 Filed 12–13–18; 8:45 am]

BILLING CODE 1300–01–D

# Proposed Rules

Federal Register

Vol. 83, No. 240

Friday, December 14, 2018

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

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 927

[Doc. No. AMS–SC–18–0078; SC19–927–1 PR]

#### Pears Grown in Oregon and Washington; Change in Committee Structure for Processed Pears

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule invites comments on a recommendation from the Processed Pear Committee (Committee) to change the Committee's membership structure. This action would remove the second alternate member position from the Committee structure, leaving ten member positions and one alternate position for each respective member.

**DATES:** Comments must be received by January 14, 2019.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or internet: <http://www.regulations.gov>. All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours or can be viewed at: <http://www.regulations.gov>. All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting comments will be made public on the internet at the address provided above.

**FOR FURTHER INFORMATION CONTACT:** Dale Novotny, Marketing Specialist, or Gary Olson, Regional Director, Northwest Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (503) 326–2724, Fax: (503) 326–7440, or Email: [DaleJ.Novotny@usda.gov](mailto:DaleJ.Novotny@usda.gov) or [GaryD.Olson@usda.gov](mailto:GaryD.Olson@usda.gov).

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: [Richard.Lower@usda.gov](mailto:Richard.Lower@usda.gov).

**SUPPLEMENTARY INFORMATION:** This action, pursuant to 5 U.S.C. 553, proposes an amendment to regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposed rule is issued under Marketing Order No. 927, as amended (7 CFR part 927), regulating the handling of pears grown in Oregon and Washington. Part 927, (hereinafter referred to as “the Order”) is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the “Act.” The Committee locally administers the Order and is comprised of growers, handlers and processors operating within the area of production, and a public member.

The Department of Agriculture (USDA) is issuing this proposed rule in conformance with Executive Orders 13563 and 13175. This proposed rule falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

Additionally, because this proposed rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled “Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled ‘Reducing Regulation and Controlling Regulatory Costs’” (February 2, 2017).

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under

section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Under the provisions of the Order, the Processed Pear Committee consists of ten members; three grower members, three handler members, three processor members, and one member representing the public. Under the current provisions, for each member there are two alternate members designated as the “first alternate” and the “second alternate.” This proposed rule would change the membership structure of the Processed Pear Committee by removing the second alternate position for all members. The Committee unanimously recommended this change at a meeting held on May 30, 2018.

The membership structure of the Processed Pear Committee is established in § 927.20(b) of the Order. In addition, § 927.20(c) provides that the Secretary, upon recommendation of the Committee, may reapportion members among districts, may change the number of members and alternate members, and may change the composition of the Committee by changing the ratio of members, including their alternates. The Committee structure was reapportioned in 2013; section 927.150 specifies the current reapportioned Committee membership structure.

At its May 30, 2018, meeting, the Committee unanimously recommended changing the Committee structure by removing the second alternate position. In recent years, the Committee has experienced difficulties in finding enough eligible nominees to fill the second alternate positions. It is the Committee's belief that continuing to fill the second alternate positions carries limited benefit to their operation and

has become a burdensome task. Further, the second alternate position has rarely been called upon to serve on the Committee to conduct business. As such, this rule would amend § 927.150 of the Order's administrative rules and regulations by removing the second alternate position. The ten member positions would remain with one alternate member position assigned to each. This change should result in more efficiency in filling the Committee's membership positions, while still maintaining adequate representation of the processed pear industry.

#### Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 1,500 growers of processed pears in the regulated production area and approximately 43 handlers of processed pears subject to regulation under the Order. Small agricultural producers are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$7,500,000 (13 CFR 121.201).

According to data compiled by the National Agricultural Statistics Service (NASS) for 2017, the state of Oregon produced 32,300 tons of pears for processing at a market year average price of \$388 per ton for an estimated total value of \$12,532,400. The state of Washington produced 85,900 tons at a market year average price of \$344 per ton for an estimated total value of \$29,549,600. Therefore, the total value of production of processed pears assessed under the Order for the last year was \$42,082,000 (\$12,532,400 plus \$29,549,600). Based on the number of processed pear growers in Oregon and Washington (1,500), and assuming a normal distribution, the average gross revenue for each producer can be estimated at approximately \$28,055 (\$42,082,000 divided by 1,500 growers).

Furthermore, based on Committee records, it is reported that all Oregon and Washington processed pear handlers currently ship less than \$7,500,000 worth of processed pears annually. From this information, USDA concludes that the majority of growers and handlers of Oregon and Washington processed pears may be classified as small entities.

There are three pear processing plants in the production area, all currently located in Washington. According to Committee records, all three pear processors would be considered large entities under the SBA's definition of a small business.

This rule would amend § 927.150 of the Order's administrative rules and regulations to change the Committee's membership structure by removing the second alternate position. Authority for the modification of the Committee structure is provided in § 927.20(c) of the Order.

The Committee believes that the proposed change would not negatively impact growers, handlers, or processors. The benefits for this rule are not expected to be disproportionately greater or lesser for small growers, handlers, or processors than for larger entities. The proposed change is expected to benefit the industry as a whole through more efficient selection of Committee members and alternates.

The Committee did not discuss other alternatives to this proposed change at its May 30, 2018, meeting. The only other option was to leave the Order unchanged and maintain the status quo, which would have required the Committee to continue to fill the second alternate positions moving forward. By eliminating the second alternate position from the Committee structure, the industry would only have to nominate and put forward for selection two-thirds of the qualified candidates that are currently required.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581–0189, Fruit, Vegetable and Specialty Crops. No changes in those requirements would be necessary as a result of this action. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would not impose any additional reporting or recordkeeping requirements on either small or large Oregon and Washington processed pear handlers. As with all Federal marketing order programs, reports and forms are periodically

reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

#### List of Subjects in 7 CFR Part 927

Marketing agreements, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 927 is proposed to be amended as follows:

#### PART 927—PEARS GROWN IN OREGON AND WASHINGTON

■ 1. The authority citation for 7 CFR part 927 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. Revise § 927.150 to read as follows:

##### § 927.150 Reapportionment of the Processed Pear Committee.

Pursuant to § 927.20(c), on or after July 1, 2019, the 10-member Processed Pear Committee is reapportioned and shall consist of three grower members, three handler members, three processor members, and one member representing the public. For each member there shall be an alternate. District 1, the State of Washington, shall be represented by two grower members and two handler members. District 2, the State of Oregon, shall be represented by one grower member and one handler member. Processor members may be from District 1, District 2, or from both districts.



Dated: December 11, 2018.

**Bruce Summers,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 2018-27140 Filed 12-13-18; 8:45 am]

BILLING CODE 3410-02-P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 956

[Doc. No. AMS-SC-18-0028; SC-18-956-1]

#### **Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon; Proposed Amendments to Marketing Order 956 and Referendum Order**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule and referendum order.

**SUMMARY:** This document proposes amendments to Marketing Order No. 956, which regulates the handling of sweet onions grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon. The Walla Walla Sweet Onion Marketing Committee (Committee) recommended changing the Committee's size, quorum, and voting requirements. The Committee also recommended changing the term of office and staggered term limits so that the term of office for producers and handlers would be two fiscal periods instead of three fiscal periods, and one-half instead of one-third of the producer and handler member terms would expire every year.

**DATES:** The referendum will be conducted from December 17, 2018, through December 31, 2018. The representative period for the referendum is June 1, 2017, through May 31, 2018.

**FOR FURTHER INFORMATION CONTACT:** Geronimo Quinones, Marketing Specialist, or Patty Bennett, Director, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or Email: [Geronimo.Quinones@usda.gov](mailto:Geronimo.Quinones@usda.gov) or [Patty.Bennett@usda.gov](mailto:Patty.Bennett@usda.gov).

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-

2491, Fax: (202) 720-8938, or Email: [Richard.Lower@usda.gov](mailto:Richard.Lower@usda.gov).

**SUPPLEMENTARY INFORMATION:** This proposal, pursuant to 5 U.S.C. 553, proposes amendments to regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposal is issued under Marketing Order No. 956, as amended (7 CFR part 956), regulating the handling of sweet onions grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon. Part 956 (referred to as the "Order") is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act." The Committee locally administers the Order and is comprised of sweet onion producers and handlers operating within the area of production and a public member.

Section 608c(17) of the Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900) authorizes amendment of the Order through this informal rulemaking action.

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 13563 and 13175. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this proposed rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs'" (February 2, 2017).

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule shall not be deemed to preclude, preempt, or supersede any State program covering sweet onions grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing

on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed no later than 20 days after the date of entry of the ruling.

Section 1504 of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) (Pub. L. 110-246) amended section 608c(17) of the Act, which in turn required the addition of supplemental rules of practice to 7 CFR part 900 (73 FR 49307; August 21, 2008). The amendment of section 608c(17) of the Act and the supplemental rules of practice authorize the use of informal rulemaking (5 U.S.C. 553) to amend Federal fruit, vegetable, and nut marketing agreements and orders. USDA may use informal rulemaking to amend marketing orders based on the nature and complexity of the proposed amendments, the potential regulatory and economic impacts on affected entities, and any other relevant matters.

AMS has considered these factors and has determined that the amendments proposed are not unduly complex and the nature of the proposed amendments is appropriate for utilizing the informal rulemaking process to amend the Order.

The proposed amendments were unanimously recommended by the Committee following deliberations at two public meetings held on November 14, 2017, and March 3, 2018. The proposals would amend the Order by changing the Committee's size, quorum, and voting requirements. This action would also change the term of office and staggered term limits so that the term of office for producers and handlers would be two fiscal periods instead of three fiscal periods, and one-half instead of one-third of the producer and handler member terms would expire every year. If the proposed amendments are finalized, the Committee would hold nominations for producer and handler member and alternate positions. All the Committee's producer and handler positions would be filled by new nominations. Members and alternates who are currently serving could be nominated to serve on the new Committee.

A proposed rule soliciting comments on the proposed amendments was issued on July 19, 2018, and published in the **Federal Register** on July 24, 2018 (83 FR 34953). One comment in support of the amendments was received. AMS will conduct a producer referendum to determine support for the proposed

amendments. If appropriate, a final rule will then be issued to effectuate the amendments favored by producers in the referendum.

#### **Proposal 1—Reduce Committee Size**

Section 956.20 provides that the Committee consists of ten members, six of whom shall be producers, three of whom shall be handlers, and one public member. This proposal would amend § 956.20 by reducing the size of the Committee from ten to seven members, four of whom shall be producers, two of whom shall be handlers, and one public member. The requirement that each member have an alternate with the same qualifications as the member would remain unchanged.

Since promulgation of the Order in 1995, the number of Walla Walla sweet onion producers and handlers operating in the industry has decreased, which makes it difficult to find enough members and alternates to fill all positions on the Committee. Decreasing the Committee's size from ten members to seven members would make it more reflective of today's industry. Reducing the size of the Committee would enable it to more effectively fulfill membership and quorum requirements. These changes should help the Committee streamline its operations and increase its effectiveness.

#### **Proposal 2—Revise Term of Office and Staggered Term Limits**

Section 956.21 requires Committee members and their alternates to serve for three fiscal periods in staggered terms with one-third of the terms expiring each year.

This proposal would change § 956.21 by revising the terms of office for the producer and handler members from three fiscal periods to two fiscal periods beginning on June 1 so that one-half of the Committee membership changes every year. The staggered terms would also change so that one-half instead of one-third of the producer and handler member terms expire every year. The proposed term limit changes would only apply to producer and handler members; the public member term would remain at three years.

#### **Proposal 3—Revise Quorum and Voting Requirements**

Currently, Section 956.28(a) states that six members of the Committee shall constitute a quorum, and six concurring votes shall be required to pass any motion or approve any Committee action, except that recommendations made pursuant to § 956.61 shall require seven concurring votes.

The proposed changes would modify § 956.28 to state that four rather than six members would constitute a quorum, and four rather than six concurring votes would be required to pass any motion or approve any Committee action, except for recommendations made pursuant to § 956.61, which would require five rather than seven concurring votes. These changes would help streamline the Committee's operations and increase its effectiveness.

#### *Final Regulatory Flexibility Analysis*

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are eight handlers of Walla Walla sweet onions subject to regulation under the Order and approximately 15 producers in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$7,500,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000 (13 CFR 121.201).

The Committee reported that approximately 390,000 50-pound bags or equivalents of Walla Walla sweet onions were shipped into the fresh market in 2017. Based on information reported by USDA's Market News Service, the average 2017 marketing year f.o.b. shipping point price for the Walla Walla sweet onions was \$14.90 per 50-pound equivalent. Multiplying the \$14.90 average price by the shipment quantity of 390,000 50-pound equivalents yields an annual crop revenue estimate of \$5,811,000. The average annual revenue for each of the eight handlers is therefore calculated to be \$726,375 (\$5,811,000 divided by eight), which is less than the SBA threshold of \$7,500,000. Consequently, all the Walla Walla sweet onion handlers could be classified as small entities.

In addition, based on information provided by the National Agricultural Statistics Service (NASS), the average

producer price for Walla Walla sweet onions for the 2012 through 2016 marketing years is \$15.27 per 50-pound equivalent. NASS has not released data regarding the 2017 marketing year at this time. Multiplying the 2012–2016 marketing year average price of \$15.27 by the 2017 marketing year shipments of 390,000 50-pound equivalents yields an annual crop revenue estimate of \$5,955,300. The estimated average annual revenue for each of the 15 producers is therefore calculated to be approximately \$397,020 (\$5,955,300 divided by 15), which is less than the SBA threshold of \$750,000. In view of the foregoing, the majority of Walla Walla sweet onion producers and all of the Walla Walla sweet onion handlers may be classified as small entities.

The proposed amendments would change the Committee's size, quorum, and voting requirements. The proposed amendments would also change the term of office and staggered term limits so that the term of office for producers and handlers would be two fiscal periods instead of three fiscal periods, and one-half instead of one-third of the producer and handler member terms would expire every year.

The Committee's proposed amendments were unanimously recommended at two public meetings on November 14, 2017, and March 3, 2018. If these proposals are approved in a referendum, there would be no direct financial effects on producers or handlers. The number of producers and handlers operating in the industry has decreased, which makes it difficult to find enough members to fill positions on the Committee. Decreasing the Committee's size would make it more reflective of today's industry.

If the proposed amendments are finalized, the Committee would hold nominations for producer and handler member and alternate positions. All the Committee's producer and handler positions would be filled by new nominations. Members and alternates who are currently serving could be nominated to serve on the new Committee.

The Committee believes these changes will serve the needs of the Committee and the industry. No economic impact is expected if the proposed amendments are approved because they would not establish any new regulatory requirements on handlers nor would they have any assessment or funding implications. There would be no change in financial costs, reporting, or recordkeeping requirements if the proposals are approved.

Alternatives to the proposals, including making no changes at this

time, were considered by the Committee. Due to changes in the industry, AMS believes the proposals are justified and necessary to ensure the Committee's ability to locally administer the program. Reducing the size of the Committee would enable it to fulfill membership and quorum requirements fully, thereby ensuring a more efficient and orderly flow of business.

#### *Paperwork Reduction Act*

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581-0178 (Vegetable and Specialty Crops). No changes in those requirements are necessary because of this action. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large Walla Walla Valley sweet onion handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this action.

The Committee's meetings were widely publicized throughout the production area. All interested persons were invited to attend the meetings and encouraged to participate in Committee deliberations on all issues. Like all Committee meetings, the November 14, 2017, and March 3, 2018, meetings were public, and all entities, both large and small, were encouraged to express their views on the proposals.

A proposed rule concerning this action was published in the **Federal Register** on July 24, 2018 (83 FR 34953). A copy of the proposed rule was sent via email to the Committee manager for dispersal to all Committee members and interested parties. The rule was also made available through the internet by USDA and the Office of the Federal Register. A 60-day comment period ending September 24, 2018, was provided to allow interested persons to respond to the proposal. One comment

was received in support of the amendments.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

#### **Findings and Conclusions**

The findings and conclusions and general findings and determinations included in the proposed rule set forth in the July 24, 2018, issue of the **Federal Register** are hereby approved and adopted.

#### **Marketing Order**

Annexed hereto and made a part hereof is the document entitled "Order Amending the Order Regulating the Handling of Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon." This document has been decided upon as the detailed and appropriate means of effectuating the foregoing findings and conclusions. It is hereby ordered that this entire rule be published in the **Federal Register**.

#### **Referendum Order**

It is hereby directed that a producer referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR 900.400-407) to determine whether the annexed Order Amending the Order Regulating the Handling of Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon is approved by producers who have engaged in the production of sweet onions within the production area during the representative period. The representative period for the conduct of such referendum is hereby determined to be June 1, 2017, to May 31, 2018.

The agents of the Secretary to conduct such referendum are designated to be Dale Novotny and Barry Broadbent, Northwest Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (503) 326-2724, Fax: (503) 326-7440, or Email: [DaleJ.Novotny@usda.gov](mailto:DaleJ.Novotny@usda.gov) and [Barry.Broadbent@usda.gov](mailto:Barry.Broadbent@usda.gov), respectively.

### **Order Amending the Order Regulating the Handling of Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon <sup>1</sup>**

#### **Findings and Determinations**

The findings hereinafter set forth are supplementary to the findings and determinations which were previously made in connection with the issuance of the Order; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

1. The Order, as amended, and as hereby proposed to be further amended, and all the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

2. The Order, as amended, and as hereby proposed to be further amended, regulates the handling of sweet onions grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon and is applicable only to persons in the respective classes of commercial and industrial activity specified in the Order;

3. The Order, as amended, and as hereby proposed to be further amended, is limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several marketing orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

4. The Order, as amended, and as hereby proposed to be further amended, prescribes, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of onions produced or packed in the production area; and

5. All handling of onions produced or packed in the production area as defined in the Order is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

#### **Order Relative to Handling**

*It is therefore ordered*, that on and after the effective date hereof, all handling of sweet onions grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon shall be in conformity to, and in compliance with, the terms and conditions of the

<sup>1</sup> This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

said Order as hereby proposed to be amended as follows:

The provisions of the proposed marketing order amending the Order contained in the proposed rule issued by the Administrator on July 19, 2018, and published in the **Federal Register** (83 FR 34953) on July 24, 2018, will be and are the terms and provisions of this order amending the Order and are set forth in full herein.

#### List of Subjects in 7 CFR Part 956

Onions, Marketing agreements, Reporting and recordkeeping requirements.

Dated: December 11, 2018.

**Bruce Summers,**  
Administrator, Agricultural Marketing Service.

For the reasons discussed in the preamble, 7 CFR part 956 is proposed to be amended as follows.

#### PART 956—SWEET ONIONS GROWN IN THE WALLA WALLA VALLEY OF SOUTHEAST WASHINGTON AND NORTHEAST OREGON

- 1. The authority citation for 7 CFR part 956 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

- 2. Amend § 956.20 by revising paragraph (a) to read as follows:

##### § 956.20 Establishment and membership.

(a) The Walla Walla Sweet Onion Marketing Committee, consisting of seven members, is hereby established. The Committee shall consist of four producer members, two handler members, and one public member. Each member shall have an alternate who shall have the same qualifications as the member.

\* \* \* \* \*

- 3. Revise § 956.21 to read as follows:

##### § 956.21 Term of office.

(a) Except as otherwise provided in paragraph (b) of this section, the term of office of grower and handler Committee members and their respective alternates shall be two fiscal periods beginning on June 1 or such other date as recommended by the Committee and approved by the Secretary. The terms shall be determined so that one-half of the grower membership and one-half of the handler membership shall terminate each year. Members and alternates shall serve during the term of office for which they are selected and have been qualified, or during that portion thereof beginning on the date on which they qualify during such term of office and continuing until the end thereof, or

until their successors are selected and have qualified.

(b) The term of office of the initial members and alternates shall begin as soon as possible after the effective date of this subpart. One-half of the initial industry grower and handler members and alternates shall serve for a one-year term and one-half shall serve for a two-year term. The initial as well as all successive terms of office of the public member and alternate member shall be for three years.

(c) The consecutive terms of office for all grower and handler members shall be limited to two two-year terms. There shall be no such limitation for alternate members.

■ 4. Amend § 956.28 by revising paragraph (a) to read as follows:

##### § 956.28 Procedure.

(a) Four members of the Committee shall constitute a quorum, and four concurring votes shall be required to pass any motion or approve any Committee action, except that recommendations made pursuant to § 956.61 shall require five concurring votes.

\* \* \* \* \*

[FR Doc. 2018–27143 Filed 12–13–18; 8:45 am]

**BILLING CODE 3410–02–P**

#### DEPARTMENT OF COMMERCE

##### Bureau of Industry and Security

##### 15 CFR Part 744

[Docket No. 180712626–8840–01]

RIN 0694–AH61

##### Review of Controls for Certain Emerging Technologies

**AGENCY:** Bureau of Industry and Security, Commerce.

**ACTION:** Advance notice of proposed rulemaking (ANPRM), Extension of comment period.

**SUMMARY:** The Bureau of Industry and Security (BIS) is extending the comment period for its November 19, 2018, advanced notice of proposed rulemaking (ANPRM), “Review of Controls for Certain Emerging Technologies” until January 10, 2019. In response to requests received from members of the public, BIS believes it is appropriate to extend the comment period to provide interested parties additional time to submit their responses to the ANPRM.

**DATES:** The comment period announced in the notice that was published on November 19, 2018 (83 FR 58201) is

extended. Comments on the ANPRM must now be received by BIS on or before January 10, 2019.

**ADDRESSES:** You may submit comments through either of the following:

• *Federal eRulemaking Portal:* <http://www.regulations.gov>. The identification number for this rulemaking is BIS 2018–0024.

• *Address:* By mail or delivery to Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 2099B, 14th Street and Pennsylvania Avenue NW, Washington, DC 20230. Refer to RIN 0694–AH61.

##### FOR FURTHER INFORMATION CONTACT:

Kirsten Mortimer, Office of National Security and Technology Transfer Controls, Bureau of Industry and Security, Department of Commerce. Phone: (202) 482–0092; Fax (202) 482–3355; Email: [Kirsten.Mortimer@bis.doc.gov](mailto:Kirsten.Mortimer@bis.doc.gov).

##### SUPPLEMENTARY INFORMATION:

##### Background

On November 19, 2018 (83 FR 58201), the Bureau of Industry and Security (BIS) published an advanced notice of proposed rulemaking, “Review of Controls for Certain Emerging Technologies,” which included a comment period deadline of December 19, 2018. Since publication, BIS has received requests for additional time to submit comments. In response to those requests, BIS is extending the public comment period until January 10, 2019. A description of the specific topics and issues that BIS would like addressed is outlined in the November 19, 2018 **Federal Register** ANPRM.

Dated: December 10, 2018.

**Matthew S. Borman,**

*Deputy Assistant Secretary for Export Administration.*

[FR Doc. 2018–27148 Filed 12–13–18; 8:45 am]

**BILLING CODE 3510–33–P**

#### DEPARTMENT OF HEALTH AND HUMAN SERVICES

##### Food and Drug Administration

##### 21 CFR Parts 314 and 601

[Docket No. FDA–2013–N–0500]

##### Withdrawal of Proposed Rule on Supplemental Applications Proposing Labeling Changes for Approved Drugs and Biological Products

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** The Food and Drug Administration (FDA, the Agency, or we) is announcing the withdrawal of the proposed rule on “Supplemental Applications Proposing Labeling Changes for Approved Drugs and Biological Products” that published in the **Federal Register** of November 13, 2013. FDA is taking this action in light of concerns expressed by commenters and considerations regarding Agency resources. FDA is continuing to consider ways to improve the communication of important, newly acquired drug safety information to healthcare providers and the public and to facilitate efforts to keep drug product labeling up to date throughout the product lifecycle.

**DATES:** The proposed rule published November 13, 2013 (78 FR 67985), is withdrawn as of December 14, 2018.

**ADDRESSES:** For access to the docket, 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:** Janice L. Weiner, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6270, Silver Spring, MD 20993–0002, 301–796–3601, [janice.weiner@fda.hhs.gov](mailto:janice.weiner@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and FDA regulations, the Agency makes decisions regarding the approval of marketing applications, including supplemental applications, based on a comprehensive analysis of the product’s risks and benefits under the conditions of use prescribed, recommended, or suggested in the labeling (see 21 U.S.C. 355(c) and (d); 42 U.S.C. 262). All drugs have risks, and healthcare practitioners and patients must balance the risks and benefits of a drug when making decisions about medical therapy. As a drug is used more widely or under diverse conditions, new information regarding the risks and benefits of a drug may become available, and may include new risks or new information about known risks. Accordingly, all holders of new drug applications (NDAs), abbreviated new drug applications (ANDAs), and biologics license applications (BLAs) are required to develop written procedures for the surveillance, receipt, evaluation, and reporting of postmarketing adverse drug

experiences to FDA (see 21 CFR 314.80(b), 314.98(a), and 600.80(b)). Application holders also must comply with applicable reporting and recordkeeping requirements, including submission of an annual report (which contains, among other things, a brief summary of significant new information from the previous year that might affect the safety, effectiveness, or labeling of the drug product, and a description of the actions the applicant has taken or intends to take as a result of this new information) and, if appropriate, proposed revisions to product labeling (see 21 U.S.C. 355(k) and 21 CFR 314.81).

When new information becomes available that causes labeling to be inaccurate, false, or misleading, all drug and biological product application holders must take steps to change the content of their product labeling in accordance with §§ 314.70, 314.97, and 601.12 (21 CFR 314.70, 314.97, and 601.12) (see 21 CFR 201.56(a)(2); see also 21 U.S.C. 331(a) and (b) and 352(a), (f), and (j)). While all drug and biological product application holders have these obligations, under current regulations, the procedures available to ANDA holders to update the labeling of generic drugs differ in certain respects from the procedures available to NDA holders and BLA holders to update product labeling. In addition, there are limitations on the procedures available to NDA holders and BLA holders to make certain updates to the Highlights of Prescribing Information of drug and biological product labeling that are subject to the content and format labeling requirements described in §§ 201.56(d) and 201.57 (21 CFR 201.56(d) and 201.57) (commonly referred to as the “Physician Labeling Rule” (PLR) format).

In the **Federal Register** of November 13, 2013 (78 FR 67985), FDA proposed to amend its regulations to revise and clarify procedures for application holders of an approved drug or biological product to change the product labeling to reflect certain types of newly acquired safety-related information in advance of FDA’s review of the change by submitting a “changes being effected” (CBE–0) supplement to FDA. A CBE–0 supplement is an exception to the general requirement for FDA approval of a prior approval supplement containing revised product labeling before distribution. The proposed rule, if finalized, would have enabled ANDA holders for generic drugs to independently update and promptly distribute revised product labeling to reflect certain types of newly acquired safety-related information, even though

the revised labeling may temporarily differ from that of the corresponding reference listed drug (RLD or brand drug) upon submission of a CBE–0 supplement to FDA. FDA’s proposed revisions to its regulations to allow generic drug manufacturers to update product labeling through CBE–0 supplements in the same manner as brand drug manufacturers were intended to improve communication of important, newly acquired drug safety information to healthcare providers and the public. The proposed rule, if finalized, also would have removed the limitation on submission of CBE–0 supplements by any application holder for certain changes to the Highlights of Prescribing Information in PLR-format product labeling. For further information about these and other proposed regulatory changes described in the proposed rule, see 78 FR 67985.

FDA received numerous comments on the proposed rule from a diverse group of stakeholders. In view of requests to meet with FDA to present alternatives to the proposed regulatory changes described in the proposed rule and to promote transparency, FDA held a public meeting on March 27, 2015, at which any stakeholder had the opportunity to present or comment on the proposed rule or any alternative proposals intended to improve communication of important, newly acquired drug safety information to healthcare professionals and the public. In the February 18, 2015, document announcing the public meeting (80 FR 8577), FDA reopened the docket for the proposed rule until April 27, 2015, to receive submissions of additional written comments on the proposed rule as well as alternative proposals presented during the public meeting.

Several comments supported finalizing the rule as originally proposed. Other comments supported the goals of the proposed rule, but expressed concern that temporary labeling differences between generic drugs and the corresponding brand drug could complicate healthcare decision making. Comments in support of the proposed rule maintained that it would enhance drug safety by making healthcare practitioners and the public aware of new safety-related information about a drug more quickly. Several comments also opined that tort liability for failure to adequately warn patients of a known hazard may be an incentive for drug manufacturers to ensure that their product labeling reflects the most current safety information.

Comments in opposition to the proposed rule raised policy, legal, and cost considerations. A number of

comments asserted that generic drug application holders do not generally receive or possess all the data necessary to evaluate postmarket safety information and to support safety-related labeling changes. Comments expressed concern that additional or different warnings in generic drug labeling, even if temporary, may undermine confidence in generic drugs and their therapeutic equivalence to the brand drug. Comments throughout the healthcare delivery system also expressed concern about the confusion that might result if there were different versions of safety labeling for multiple generic versions of the same drug until FDA decided whether to approve the labeling changes proposed in the CBE–0 supplements. Several comments asserted that the proposed rule would impose significant burdens on the generic drug industry that would necessarily increase the cost of generic drugs or lead to market exit, which may increase the risk of drug shortages. However, most concerns regarding economic impact focused on the increased risk of tort litigation against generic drug manufacturers and others in the healthcare system.

## II. Withdrawal of the Proposed Rule

Having reviewed the comments on the proposed rule and further considered the proposal, FDA is withdrawing the proposed rule on “Supplemental Applications Proposing Labeling Changes for Approved Drugs and Biological Products” published in the **Federal Register** of November 13, 2013. The concerns raised in the comments reflect significant competing interests, and FDA acknowledges that the proposed rule, if finalized, would present significant potential downsides. In light of those potential downsides, the Agency does not believe that finalizing the proposed rule would be an appropriate use of Agency resources. Rather, the Agency believes that such resources would be better used on other efforts to improve the communication of important, newly acquired drug safety information to healthcare professionals and the public, as discussed in greater detail below.

The withdrawal of this proposed rule does not alter the ongoing obligation under FDA’s current regulations for all holders of marketing applications for drug and biological products—including ANDA holders—to ensure their product labeling is accurate, and not false or misleading, and to take steps to update their product labeling when new information becomes available that causes the labeling to become inaccurate, false, or misleading (see

§ 201.56(a)(2); see also 21 U.S.C. 331(a) and (b) and 352(a), (f), and (j)). This obligation serves an important public health function because new information regarding the risks and benefits of a drug may become available over time from various sources, including from postmarketing adverse drug experience reports and published literature, and updates to product labeling may be necessary.

In addition to the ongoing obligation described above, ANDA holders must generally maintain the same labeling as the RLD throughout the lifecycle of the generic drug product. ANDA holders can, however, propose certain updates to product labeling by submitting a prior approval supplement that contains adequate supporting information for the proposed change. FDA will determine whether the proposed labeling change is appropriate, and whether the labeling for the RLD and corresponding generic drug(s) should be revised. If the approval of the NDA for the RLD has been withdrawn at the NDA holder’s request because the RLD is no longer being marketed and certain other conditions are satisfied (see 21 CFR 314.150(c)), the NDA holder can no longer update labeling for the withdrawn RLD, but ANDA holders can still propose labeling updates through the submission of a prior approval supplement. In such cases, if FDA determines that the proposed labeling change is appropriate and approves the supplement, the Agency may request that other ANDA holders and any ANDA applicants relying on the same withdrawn RLD make the same updates (see FDA draft guidance for industry “Updating ANDA Labeling After the Marketing Application for the Reference Listed Drug Has Been Withdrawn,” 81 FR 44883, July 11, 2016) (Draft Guidance on Updating ANDA Labeling) (Ref. 1).

As noted, the proposed rule would have removed the current prohibition against the submission of CBE–0 supplements by NDA and BLA holders to change information in the Highlights of Prescribing Information to reflect newly acquired information for any of the reasons described in § 314.70(c)(6)(iii) or § 601.12(f)(2), as applicable, the NDA holder or BLA holder can normally obtain permission to do so under the current regulation by contacting FDA. In response to an applicant’s inquiry about submission of a CBE–0 supplement for a change that would affect the

Highlights of drug labeling, FDA typically waives the limitation on submission of a CBE–0 supplement under 21 CFR 314.90 or specifically requests that the applicant proceed with a CBE–0 supplement under § 314.70(c)(6)(iii)(E) or § 601.12(f)(2)(i)(E).

FDA is continuing to consider ways to improve the communication of important, newly acquired drug safety information to healthcare professionals and the public, and to facilitate efforts to keep drug product labeling up to date throughout the product lifecycle. Although the proposed rule focused on labeling updates to reflect newly acquired information related to drug safety, we recognize that there are general challenges for keeping generic drug labeling up to date when the RLD labeling is no longer being updated, including when FDA has withdrawn approval of the NDA for reasons other than safety or effectiveness. The Agency is actively evaluating ways to facilitate the updating of generic drug labeling to help ensure that drug labeling reflects the most current information. For example, FDA’s fiscal year (FY) 2019 Budget Request includes an investment to support efforts to update generic drug labeling, with an initial focus on oncology products, as part of the Agency’s efforts to ensure that patients and their providers have access to up-to-date information to inform clinical decisions (Ref. 2). These efforts to ensure that more generic drugs have up-to-date product labeling reflecting the latest treatment information can also encourage wider adoption of generic drugs, broadening access to lower-cost alternatives to brand drugs for the American people.

The withdrawal of this proposed rule does not preclude the Agency from reinstituting rulemaking concerning the issues addressed in the proposal. Should we decide to undertake such rulemaking in the future, we will re-propose the action and provide new opportunities for comment. Furthermore, this proposed rule is only intended to address the withdrawal of the proposed rule on “Supplemental Applications Proposing Labeling Changes for Approved Drugs and Biological Products” published in the **Federal Register** of November 13, 2013, and not any other pending proposals that the Agency has issued or is considering, including the Draft Guidance on Updating ANDA Labeling (Ref. 1) or the Agency’s efforts to update the labeling of certain oncology drug products under FDA’s FY2019 Budget Request (Ref. 2). If you need additional information about the subject matter of

the withdrawn proposed rule, you may review the Agency's website (<https://www.fda.gov>) for any current information on the matter.

### III. References

The following references are on display at the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at <https://www.regulations.gov>. FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

1. FDA, draft guidance for industry, "Updating ANDA Labeling After the Marketing Application for the Reference Listed Drug Has Been Withdrawn," July 2016 (available at <https://www.fda.gov/ucm/groups/fdagov-public/@fdagov-drugs-gen/documents/document/ucm510240.pdf>).

2. U.S. Department of Health and Human Services, Food and Drug Administration, "Fiscal Year 2019 Justification of Estimates for Appropriations Committees" (available at <https://www.fda.gov/downloads/aboutfda/reportsmanualstudies/reports/budgetreports/ucm603315.pdf>).

Dated: December 10, 2018.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2018-27098 Filed 12-13-18; 8:45 am]

**BILLING CODE 4164-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Docket No.: HHS-OCR-0945-AA00]

### 45 CFR Parts 160 and 164

**RIN 0945-AA00**

### Request for Information on Modifying HIPAA Rules To Improve Coordinated Care

**AGENCY:** Office for Civil Rights (OCR), HHS.

**ACTION:** Request for information.

**SUMMARY:** The Office for Civil Rights (OCR) is issuing this Request for Information (RFI) to assist OCR in identifying provisions of the Health Insurance Portability and Accountability Act privacy and security regulations that may impede the transformation to value-based health care or that limit or discourage coordinated care among individuals and covered entities (including hospitals, physicians, and other providers, payors, and insurers), without meaningfully contributing to the protection of the privacy or security of individuals'

protected health information. This RFI requests information on whether and how the rules could be revised to promote these goals, while preserving and protecting the privacy and security of such information and individuals' rights with respect to it.

**DATES:** Comments must be submitted on or before February 12, 2019.

**ADDRESSES:** You may send comments, identified by RIN 0945-AA00 or Docket HHS-OCR-0945-AA00, by any of the following methods:

- *Federal eRulemaking Portal.* You may submit electronic comments at <http://www.regulations.gov> by searching for the Docket ID number HHS-OCR-0945-AA00. Follow the instructions for sending comments.

- *Hand-Delivery or Regular, Express, or Overnight Mail:* U.S. Department of Health and Human Services, Office for Civil Rights, Attention: RFI, RIN 0945-AA00, Hubert H. Humphrey Building, Room 509F, 200 Independence Avenue SW, Washington, DC 20201.

**Instructions:** All submissions received must include "Department of Health and Human Services, Office for Civil Rights RIN 0945-AA00" for this RFI. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Further instructions are available under PUBLIC PARTICIPATION.

**Docket:** For complete access to the docket to read background documents or comments received, go to <http://www.regulations.gov> and search for Docket ID number HHS-OCR-0945-AA00.

**FOR FURTHER INFORMATION CONTACT:** Marie Meszaros at (800) 368-1019 or (800) 537-7697 (TDD).

### SUPPLEMENTARY INFORMATION:

#### I. Background

This RFI seeks public input on the regulations issued pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA)<sup>1</sup> and modified pursuant to, among other laws, the Health Information Technology for Economic and Clinical Health (HITECH) Act of 2009.<sup>2</sup> The HIPAA Privacy and Security Rules protect individuals' medical records and

<sup>1</sup> See the Administrative Simplification provisions of title II, subtitle F, of the HIPAA (Pub. L. 104-191), which added a new part C to title XI of the Social Security Act (sections 1171-1179 of the Social Security Act, 42 U.S.C. 1320d-1320d-8) and included section 264, under which HHS has adopted the HIPAA Privacy Rule.

<sup>2</sup> The HITECH Act was enacted as title XIII of division A and title IV of division B of the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. 111-5).

other individually identifiable health information created or received by or on behalf of covered entities, known as "protected health information" (PHI).<sup>3</sup> The Privacy and Security Rules limit the circumstances under which covered entities may use and disclose PHI and require covered entities to implement safeguards to protect the privacy and security of PHI. The Privacy Rule also gives individuals rights with respect to their PHI, including the right to access their PHI and to receive adequate notice of a covered entity's privacy practices. In addition, the HIPAA Breach Notification Rule requires HIPAA covered entities to provide notification following a breach of unsecured PHI to individuals and OCR (and, in some instances, the media) and requires business associates to notify the relevant covered entities of such breaches.<sup>4</sup> In this RFI, the Privacy, Security, and Breach Notification Rules will be referenced collectively as the HIPAA Rules.

OCR seeks public input on ways to modify the HIPAA Rules to remove regulatory obstacles and decrease regulatory burdens in order to facilitate efficient care coordination and/or case management and to promote the transformation to value-based health care, while preserving the privacy and security of PHI. Specifically, OCR seeks information on the provisions of the HIPAA Rules that may present obstacles to, or place unnecessary burdens on, the ability of covered entities and business associates to conduct care coordination and/or case management, or that may inhibit the transformation of the health care system to a value-based health care system. Correspondingly, OCR seeks comment on modifications to the HIPAA Rules that would facilitate efficient care coordination and/or case management, and/or promote the transformation to value-based health care. OCR also broadly requests information and perspectives from regulated entities and the public about covered entities' and business associates' technical capabilities, individuals' interests, and ways to achieve these goals.

In addition, OCR seeks comment on aspects of the Privacy Rule that OCR has identified for potential modification to further these goals, specifically:

- Promoting information sharing for treatment and care coordination and/or case management by amending the Privacy Rule to encourage, incentivize,

<sup>3</sup> See the HIPAA Privacy and Security Rules at 45 CFR part 160 and Subparts A, C, and E of part 164.

<sup>4</sup> See 45 CFR part 160 and part 164, Subparts A and D.



or require covered entities to disclose PHI to other covered entities.

- Encouraging covered entities, particularly providers, to share treatment information with parents, loved ones, and caregivers of adults facing health emergencies, with a particular focus on the opioid crisis.
- Implementing the HITECH Act requirement to include, in an accounting of disclosures, disclosures for treatment, payment, and health care operations (TPO) from an electronic health record (EHR) in a manner that provides helpful information to individuals, while minimizing regulatory burdens and disincentives to the adoption and use of interoperable EHRs.
- Eliminating or modifying the requirement for covered health care providers to make a good faith effort to obtain individuals' written acknowledgment of receipt of providers' Notice of Privacy Practices, to reduce burden and free up resources for covered entities to devote to coordinated care without compromising transparency or an individual's awareness of his or her rights.

## II. Solicitation of Comments

OCR is soliciting public comments that offer recommendations for modifying existing regulations or guidance, or developing new guidance, that could further the goals described below.

### *a. Promoting Information Sharing for Treatment and Care Coordination*

The Privacy Rule establishes an individual's right to access and obtain a copy of his or her PHI.<sup>5</sup> The Privacy Rule currently requires a covered entity to provide an individual with access to his or her PHI within 30 days after receipt of a request (with the possibility of one 30-day extension), and requires the covered entity to provide a copy of PHI to a third party, which may be a health care provider, when directed by an individual pursuant to the individual's right of access. These requirements apply equally to health records maintained electronically and in other media (e.g., paper). OCR seeks input on whether potential revisions to the right of access would support and promote care coordination and/or case management by enabling more timely transfer of PHI between covered entities, or between covered entities and other health care providers.

Currently, under the Privacy Rule, the only required disclosures of PHI are (1) to the individual, pursuant to the

individual's right to access, 45 CFR 164.524; and (2) to OCR for purposes of determining compliance with the HIPAA Rules. The Privacy Rule permits, but does not require, covered entities to use and disclose PHI for TPO purposes.<sup>6</sup> Further, although the Privacy Rule requires covered entities to provide individuals with access to their PHI within 30 days of receiving a request (with the possibility for one 30-day extension),<sup>7</sup> there is no deadline or requirement to disclose records when requested by another health care provider or other covered entity for purposes of coordinating care or managing cases. This can lead to circumstances where records are not transferred between covered entities (or from a covered entity to another health care provider) in a timely fashion to the detriment of coordinated care and/or case management. OCR seeks public input, including from individuals, covered entities, other health care providers, business associates, and other members of the public, on the scope of this problem, and on whether there are potential revisions to the Privacy Rule to support and promote care coordination and/or case management, including by requiring timely transfer of PHI for this purpose or other purposes, such as when a patient switches medical providers and their new provider requests the transfer of records from the previous provider.

The Privacy Rule generally requires that covered entities use, disclose, or request only the minimum PHI necessary to meet the purpose of the use, disclosure, or request.<sup>8</sup> Disclosures to or requests by health care providers for treatment purposes, including care

<sup>6</sup> "Treatment means the provision, coordination, or management of health care and related services by one or more health care providers, including the coordination or management of health care by a health care provider with a third party; consultation between health care providers relating to a patient; or the referral of a patient for health care from one health care provider to another." 45 CFR 164.501 (definition of "treatment"); also see 45 CFR 164.502(a)(1)(ii) and 164.506. The definition of "health care operations" includes, but is not limited to "any of the following activities of the covered entity to the extent that the activities are related to covered functions: (1) Conducting quality assessment and improvement activities, including outcomes evaluation and development of clinical guidelines, provided that the obtaining of generalizable knowledge is not the primary purpose of any studies resulting from such activities; patient safety activities (as defined in 42 CFR 3.20); population-based activities relating to improving health or reducing health care costs, protocol development, case management and care coordination, contacting of health care providers and patients with information about treatment alternatives; and related functions that do not include treatment; . . . ."

<sup>7</sup> 45 CFR 164.524(b)(2)(i).

<sup>8</sup> 45 CFR 164.502(b)(1).

coordination and case management, are excepted from the minimum necessary requirement.<sup>9</sup> Disclosures by covered entities for care coordination and/or case management activities to covered entities that are not health care providers remain subject to the minimum necessary standard.<sup>10</sup> Similarly, disclosures related to care coordination and/or case management but for non-treatment activities nevertheless remain subject to the minimum necessary standard, such as population-based case management and care coordination activities,<sup>11</sup> claims management, review of health care services for appropriateness of care, utilization reviews,<sup>12</sup> and formulary development.<sup>13</sup> OCR seeks input on whether disclosures of PHI to non-provider covered entities for care coordination and/or case management as part of treatment, and/or health care operations, should be excepted from the minimum necessary standard, and if so, to what extent.

Finally, some individuals, such as those experiencing homelessness or suffering from chronic conditions, including serious mental illness, receive care from a variety of sources including HIPAA covered entities, social service agencies, and community-based support programs. In addition, some jurisdictions have established multi-disciplinary teams that assist in coordinating the full spectrum of care for individuals who need such assistance. Coordinating the care and related services requires sharing PHI among those involved. Although the Privacy Rule permits a covered health care provider to disclose information to a third party for the coordination or management of treatment,<sup>14</sup> some HIPAA covered entities have expressed reluctance to share this information for fear of violating HIPAA. OCR therefore requests input on whether it should modify or otherwise clarify provisions of the Privacy Rule to encourage covered entities to share PHI with non-covered entities when needed to coordinate care and provide related health care services and support for individuals in these situations. This request asks whether an express regulatory permission should be created for HIPAA covered entities to disclose PHI to social service agencies or community-based support programs,

<sup>9</sup> 45 CFR 164.502(b)(2)(i).

<sup>10</sup> Id.

<sup>11</sup> See 45 CFR 164.501 (definitions of "health care operations," para. (1)).

<sup>12</sup> See 45 CFR 164.501 (definition of "payment").

<sup>13</sup> See 45 CFR 164.501 (definition of "health care operations," para. (6)).

<sup>14</sup> 45 CFR 164.501 (definition of "treatment").

<sup>5</sup> See 45 CFR 164.524.



and the requirements or conditions upon which the regulatory permission should be based, including whether covered entities should be required to enter into agreements with such entities that contain provisions similar to the provisions in business associate agreements.<sup>15</sup> For all questions, we request information about any relevant state or other law containing standards that are different from, and perhaps inconsistent with, either existing HIPAA requirements or potential proposed changes to the HIPAA Rules.

OCR requests comment on these issues, including on the following questions:

(1) How long does it take for covered entities to provide an individual with a copy of their PHI when requested pursuant to the individual's right of access at 45 CFR 164.524? How long does it take for covered entities to provide other covered entities copies of records that are not requested pursuant to the individual's right of access? Does the length of time vary based on whether records are maintained electronically or in another form (*e.g.*, paper)? Does the length of time vary based on the type of covered entity? For instance, do some types of health care providers or plans take longer to respond to requests than others?

(2) How feasible is it for covered entities to provide PHI when requested by the individual pursuant to the right of access more rapidly than currently required under the rules? (The Privacy Rule requires covered entities to respond to a request in no more than 30 days, with a possible one-time extension of an additional 30 days.). What is the most appropriate general timeframe for responses? Should any specific purposes or types of access requests by patients be required to have shorter response times?

(3) Should covered entities be required to provide copies of PHI maintained in an electronic record more rapidly than records maintained in other media when responding to an individual's request for access? (The Privacy Rule does not currently distinguish, for timeliness requirements, between providing PHI maintained in electronic media and PHI maintained in other media). If so, what timeframes would be appropriate?

(4) What burdens would a shortened timeframe for responding to access requests place on covered entities? OCR requests specific examples and cost estimates, where available.

(5) Health care clearinghouses typically receive PHI in their role as

business associates of other covered entities, and may provide an individual access to that PHI only insofar as required or permitted by their business associate agreement with the other covered entity, just as other covered entities, when performing business associate functions, may also provide access to PHI only as required or permitted by the business associate agreement(s) with the covered entity(ies) for whom they perform business associate functions. Nevertheless, the PHI that clearinghouses possess could provide useful information to individuals. For example, clearinghouses may maintain PHI from a variety of health care providers, which may help individuals obtain their full treatment histories without having to separately request PHI from each health care provider.

(a) How commonly do business associate agreements prevent clearinghouses from providing PHI directly to individuals?

(b) Should health care clearinghouses be subject to the individual access requirements, thereby requiring health care clearinghouses to provide individuals with access to their PHI in a designated record set upon request? Should any limitations apply to this requirement? For example, should health care clearinghouses remain bound by business associate agreements with covered entities that do not permit disclosures of PHI directly to an individual who is the subject of the PHI?

(c) Alternatively, should health care clearinghouses be treated only as covered entities—*i.e.*, be subject to all requirements and prohibitions in the HIPAA Rules concerning the use and disclosure of PHI and the rights of individuals in the same way as other covered entities—and not be considered business associates, or need a business associate agreement with a covered entity, even when performing activities for, or on behalf of, other covered entities? Would this change raise concerns for other covered entities about their inability to limit uses and disclosures of PHI by health care clearinghouses? For example, would this change prevent covered entities from providing assurances to individuals about how their PHI will be used and disclosed? Or would covered entities be able to adequately fulfill individuals' expectations about uses and disclosures through normal contract negotiations with health care clearinghouses, without the need for a HIPAA business associate agreement? Would covered entities be able to impose other contractual limitations on

the uses and disclosures of PHI by the health care clearinghouse?

(d) If health care clearinghouses are not required to enter into business associate agreements with the other covered entities for whom they perform business associate functions, should such requirement also be eliminated for other covered entities when they perform business associate functions for other covered entities?

(6) Do health care providers currently face barriers or delays when attempting to obtain PHI from covered entities for treatment purposes? For example, do covered entities ever affirmatively refuse or otherwise fail to share PHI for treatment purposes, require the requesting provider to fill out paperwork not required by the HIPAA Rules to complete the disclosure (*e.g.*, a form representing that the requester is a covered health care provider and is treating the individual about whom the request is made, etc.), or unreasonably delay sharing PHI for treatment purposes? Please provide examples of any common scenarios that may illustrate the problem.

(7) Should covered entities be required to disclose PHI when requested by another covered entity for treatment purposes? Should the requirement extend to disclosures made for payment and/or health care operations purposes generally, or, alternatively, only for specific payment or health care operations purposes?

(a) Would this requirement improve care coordination and/or case management? Would it create unintended burdens for covered entities or individuals? For example, would such a provision require covered entities to establish new procedures to ensure that such requests were managed and fulfilled pursuant to the new regulatory provision and, thus, impose new administrative costs on covered entities? Or would the only new administrative costs arise because covered entities would have to manage and fulfill requests for PHI that previously would not have been fulfilled?

(b) Should any limitation be placed on this requirement? For instance, should disclosures for healthcare operations be treated differently than disclosures for treatment or payment? Or should this requirement only apply to certain limited payment or health care operations purposes? If so, why?

(c) Should business associates be subject to the disclosure requirement? Why or why not?

(8) Should any of the above proposed requirements to disclose PHI apply to all covered entities (*i.e.*, covered health

<sup>15</sup> See 45 CFR 164.502(a)(3), 164.504(e)(2).

care providers, health plans, and health care clearinghouses), or only a subset of covered entities? If so, which entities and why?

(9) Currently, HIPAA covered entities are permitted, but not *required*, to disclose PHI to a health care provider who is not covered by HIPAA (*i.e.*, a health care provider that does not engage in electronic billing or other covered electronic transactions) for treatment and payment purposes of either the covered entity or the non-covered health care provider.<sup>16</sup> Should a HIPAA covered entity be required to disclose PHI to a non-covered health care provider with respect to any of the matters discussed in Questions 7 and 8? Would such a requirement create any unintended adverse consequences? For example, would a covered entity receiving the request want or need to set up a new administrative process to confirm the identity of the requester? Do the risks associated with disclosing PHI to health care providers not subject to HIPAA's privacy and security protections outweigh the benefit of sharing PHI among all of an individual's health care providers?

(10) Should a non-covered health care provider requesting PHI from a HIPAA covered entity provide a verbal or written assurance that the request is for an accepted purpose (*e.g.*, TPO) before a potential disclosure requirement applies to the covered entity receiving the request? If so, what type of assurance would provide the most protection to individuals without imposing undue burdens on covered entities? How much would it cost covered entities to comply with this requirement? Please provide specific cost estimates where available.

(11) Should OCR create exceptions or limitations to a requirement for covered entities to disclose PHI to other health care providers (or other covered entities) upon request? For example, should the requirement be limited to PHI in a designated record set? Should psychotherapy notes or other specific types of PHI (such as genetic information) be excluded from the disclosure requirement unless expressly authorized by the individual?

(12) What timeliness requirement should be imposed on covered entities to disclose PHI that another covered entity requests for TPO purposes, or a non-covered health care provider requests for treatment or payment purposes? Should all covered entities be subject to the same timeliness requirement? For instance, should covered providers be required to

disclose PHI to other covered providers within 30 days of receiving a request? Should covered providers and health plans be required to disclose PHI to each other within 30 days of receiving a request? Is there a more appropriate timeframe in which covered entities should disclose PHI for TPO purposes? Should electronic records and records in other media forms (*e.g.*, paper) be subject to the same timeliness requirement? Should the same timeliness requirements apply to disclosures to non-covered health care providers when PHI is sought for the treatment or payment purposes of such health care providers?

(13) Should individuals have a right to prevent certain disclosures of PHI that otherwise would be required for disclosure? For example, should an individual be able to restrict or "opt out" of certain types of required disclosures, such as for health care operations? Should any conditions apply to limit an individual's ability to opt out of required disclosures? For example, should a requirement to disclose PHI for treatment purposes override an individual's request to restrict disclosures to which a covered entity previously agreed?

(14) How would a general requirement for covered health care providers (or all covered entities) to share PHI when requested by another covered health care provider (or other covered entity) interact with other laws, such as 42 CFR part 2 or state laws that restrict the sharing of information?

(15) Should any new requirement imposed on covered health care providers (or all covered entities) to share PHI when requested by another covered health care provider (or other covered entity) require the requesting covered entity to get the explicit affirmative authorization of the patient before initiating the request, or should a covered entity be allowed to make the request based on the entity's professional judgment as to the best interest of the patient, based on the good faith of the entity, or some other standard?

(16) What considerations should OCR take into account to ensure that a potential Privacy Rule requirement to disclose PHI is consistent with rulemaking by the Office of the National Coordinator for Health Information Technology (ONC) to prohibit "information blocking," as defined by the 21st Century Cures Act?<sup>17</sup>

(17) Should OCR expand the exceptions to the Privacy Rule's minimum necessary standard? For instance, should population-based case management and care coordination activities, claims management, review of health care services for appropriateness of care, utilization reviews, or formulary development be excepted from the minimum necessary requirement? Would these exceptions promote care coordination and/or case management? If so, how? Are there additional exceptions to the minimum necessary standard that OCR should consider?

(18) Should OCR modify the Privacy Rule to clarify the scope of covered entities' ability to disclose PHI to social services agencies and community-based support programs where necessary to facilitate treatment and coordination of care with the provision of other services to the individual? For example, if a disabled individual needs housing near a specific health care provider to facilitate their health care needs, to what extent should the Privacy Rule permit a covered entity to disclose PHI to an agency that arranges for such housing? What limitations should apply to such disclosures? For example, should this permission apply only where the social service agency itself provides health care products or services? In order to make such disclosures to social service agencies (or other organizations providing such social services), should covered entities be required to enter into agreements with such entities that contain provisions similar to the provisions in business associate agreements?

(19) Should OCR expressly permit disclosures of PHI to multi-disciplinary/multi-agency teams tasked with ensuring that individuals in need in a particular jurisdiction can access the full spectrum of available health and social services? Should the permission be limited in some way to prevent unintended adverse consequences for individuals? For example, should covered entities be prevented from disclosing PHI under this permission to a multi-agency team that includes a law enforcement official, given the potential to place individuals at legal risk? Should a permission apply to multi-disciplinary teams that include law enforcement officials only if such teams are established through a drug court program?<sup>18</sup> Should such a multi-disciplinary team be required to enter into a business associate (or similar) agreement with the covered entity?

<sup>17</sup> Sec 4004, Public Law 114–255, 130 Stat. 1033 (amending Subtitle C of title XXX of the Public Health Service Act by adding Sec. 3022(a)(3)).

<sup>16</sup> See 45 CFR 164.506(c)(1)–(3).

<sup>18</sup> Information about drug courts is available at <https://www.nij.gov/topics/courts/drug-courts/Pages/welcome.aspx>.

What safeguards are essential to preserving individuals' privacy in this context?

(20) Would increased public outreach and education on existing provisions of the HIPAA Privacy Rule that permit uses and disclosures of PHI for care coordination and/or case management, without regulatory change, be sufficient to effectively facilitate these activities? If so, what form should such outreach and education take and to what audience(s) should it be directed?

(21) Are there provisions of the HIPAA Rules that work well, generally or in specific circumstances, to facilitate care coordination and/or case management? If so, please provide information about how such provisions facilitate care coordination and/or case management. In addition, could the aspects of these provisions that facilitate such activities be applied to provisions that are not working as well?

*b. Promoting Parental and Caregiver Involvement and Addressing the Opioid Crisis and Serious Mental Illness*

As discussed earlier, the Privacy Rule allows covered entities to disclose PHI to caregivers in certain circumstances, including certain emergency circumstances, and this permission has particular relevance today in relation to the opioid crisis and efforts to address serious mental illness (SMI).<sup>19</sup> Nevertheless, anecdotal evidence suggests that some covered entities are reluctant to inform and involve the loved ones of individuals facing such health crises for fear of violating HIPAA. This reluctance may hinder effective coordination of care and case management involving caregivers, including family members and friends. In an effort to encourage covered entities to share necessary information with caregivers and loved ones, especially when an individual is suffering from substance use disorder (including opioid use disorder) or SMI, OCR is considering a separate rulemaking that would seek to encourage covered entities to share PHI with family members, caregivers, and others in a position to avert threats of harm to health and safety, when necessary to promote the health and recovery of those struggling with substance use disorder, including opioid use disorder, and/or SMI.<sup>20</sup> OCR would like to consider amendments to the Privacy Rule that would allow OCR

to address the opioid crisis as well as facilitate parental involvement in the treatment of their children.

Specifically, OCR requests comment on these issues, including the following:

(22) What changes can be made to the Privacy Rule to help address the opioid epidemic? What risks are associated with these changes? For example, is there concern that encouraging more sharing of PHI in these circumstances may discourage individuals from seeking needed health care services? Also is there concern that encouraging more sharing of PHI may interfere with individuals' ability to direct and manage their own care? How should OCR balance the risk and the benefit?

(23) How can OCR amend the HIPAA Rules to address serious mental illness? For example, are there changes that would facilitate treatment and care coordination for individuals with SMI, or ensure that family members and other caregivers can be involved in an individual's care? What are the perceived barriers to facilitating this treatment and care coordination? Would encouraging more sharing in the context of SMI create concerns similar to any concerns raised in relation to the previous question on the opioid epidemic? If so, how could such concerns be mitigated?

(24) Are there circumstances in which parents have been unable to gain access to their minor child's health information, especially where the child has substance use disorder (such as opioid use disorder) or mental health issues, because of HIPAA? Please specify, if known, how the inability to access a minor child's information was due to HIPAA, and not state or other law.

(25) Could changes to the Privacy Rule help ensure that parents are able to obtain the treatment information of their minor children, especially where the child has substance use disorder (including opioid use disorder) or mental health issues, or are existing permissions adequate? If the Privacy Rule is modified, what limitations on parental access should apply to respect any privacy interests of the minor child?

(a) Currently, the Privacy Rule generally defers to state law with respect to whether a parent or guardian is the personal representative of an unemancipated minor child and, thus, whether such parent or guardian could obtain PHI about the child as his/her personal representative; if someone other than the parent or guardian can or does provide consent for particular health care services, the parent or guardian is generally not the child's personal representative with respect to

such health care services.<sup>21</sup> Should these standards be reconsidered generally, or specifically where the child has substance use disorder or mental health issues?

(b) Should any changes be made to specifically allow parents or spouses greater access to the treatment information of their children or spouses who have reached the age of majority? If the Privacy Rule is changed to encourage parental and spousal involvement, what limitations should apply to respect the privacy interests of the individual receiving treatment?

(c) Should changes be made to allow adult children to access the treatment records of their parents in certain circumstances, even where an adult child is not the parent's personal representative?<sup>22</sup> Or are existing permissions sufficient? For instance, should a child be able to access basic information about the condition of a parent who is being treated for early-onset dementia or inheritable diseases? If so, what limitations should apply to respect the privacy interests of a parent?

(26) The Privacy Rule currently defers to state or other applicable law to determine the authority of a person, such as a parent or spouse, to act as a personal representative of an individual in making decisions related to their health care.<sup>23</sup> How should OCR reconcile any changes to a personal representative's authority under HIPAA with state laws that define the scope of parental or spousal authority for state law purposes?

*c. Accounting of Disclosures*

The Privacy Rule requires covered entities to provide an individual, upon request, with an accounting of certain disclosures of the individual's PHI that were made by the covered entity or its business associate during the six years before the request. See 45 CFR 164.528. While the Privacy Rule currently excludes certain disclosures from the accounting requirement, including disclosures made for TPO purposes, *see* 45 CFR 164.528(a), section 13405(c) of the HITECH Act directs the Department to modify the Privacy Rule to require that an accounting of disclosures include disclosures made for TPO purposes through an electronic health record during the three years before the request.

In 2010, OCR issued a Request for Information ("2010 RFI")<sup>24</sup> "to help us

<sup>19</sup> See, e.g., 45 CFR 164.510(b)(3), 45 CFR 164.512(j).

<sup>20</sup> See RIN: 0945-AA09, Fall 2018 Unified Agenda, Office of Information and Regulatory Affairs, Office of Management and Budget, [www.reginfo.gov](http://www.reginfo.gov).

<sup>21</sup> See 45 CFR 164.502(g)(3).

<sup>22</sup> See 45 CFR 164.502(g).

<sup>23</sup> See 45 CFR 164.502(g).

<sup>24</sup> 75 FR 23214 (May 3, 2010). Available at <https://www.gpo.gov/fdsys/pkg/FR-2010-05-03/pdf/2010-10054.pdf>.

better understand the interests of individuals with respect to learning of such disclosures [for TPO], the administrative burden on covered entities and business associates of accounting for such disclosures, and other information that may inform the Department's rulemaking in this area." After reviewing public comments, OCR issued a Notice of Proposed Rulemaking ("2011 NPRM")<sup>25</sup> proposing several modifications to the Privacy Rule to implement the HITECH Act requirement, improve the workability of the accounting of disclosures, and create a new right to an access report.

Based on public feedback on the RFI that many covered entities' systems could not distinguish between internal access (a "use" under the Privacy Rule) and external access (a "disclosure") for TPO, and that providing a full accounting of disclosures for TPO would be overly burdensome to regulated entities, OCR proposed, in addition, to provide individuals with a right to receive an "access report." The access report would have shown who had accessed the information in an individual's electronic designated record set (which would include any access, not only access that represented a disclosure outside of the entity for TPO). Commenters on the NPRM overwhelmingly opposed the proposed individual right to obtain an "access report." Many commenters expressed concern that their then-existing, commonly used EHR systems did not have the technical capability to produce the required access report and updates would be prohibitively costly for covered entities. In addition, some commenters stated that the content and format of the proposed access report would not provide meaningful, usable information to individuals. A virtual hearing conducted by a federal advisory committee in 2013 elicited similar concerns from the public and presenters at the hearing.<sup>26</sup>

OCR has not taken action to finalize the proposed accounting of disclosures rule since the comment period closed in 2011, and it now believes that the proposed access report requirement would create undue burden for covered entities without providing meaningful information to individuals. Thus, OCR intends to withdraw the NPRM, and requests public input on the questions below to help OCR to implement the HITECH Act requirement and ensure

that individuals can obtain a meaningful accounting of disclosures that gives them confidence that their PHI is being disclosed appropriately as part of receiving coordinated care or otherwise, without erecting obstacles or disincentives to the adoption and use of interoperable electronic healthcare records, which is necessary for efficient care coordination, case management, and value-based healthcare.

OCR requests public input on these issues and specifically on following questions:

(27) How many requests for an accounting of disclosures do covered entities receive annually and from what percentage of total patients? Of these, how many requests specify a particular preferred electronic form or format, and to what extent do covered entities provide the accounting in the requested form or format?

(28) How much time do covered entities take to respond to an individual's request for an accounting of disclosures? How many worker-hours are needed to produce the accounting? What is the average number of days between receipt of a request and providing the accounting to the requesting individual? How would these estimated time periods change, if at all, if covered entities were to provide a full accounting of disclosures for TPO purposes? What is the basis for these revised estimates?

(29) If your covered entity does capture and maintain information about TPO accounting, even though it is not currently required by the Privacy Rule, what is the average number of TPO disclosures made by the entity for a given individual in a calendar year? How many such disclosures are made from EHRs?

(30) In what scenarios would a business associate make a disclosure of PHI for TPO through an EHR? What is the average number of such disclosures for a given individual in a calendar year, if known?

(31) Should the Department require covered entities to account for their business associates' disclosures for TPO, or should a covered entity be allowed to refer an individual to its business associate(s) to obtain this information? What benefits and burdens would covered entities and individuals experience under either of these options?

(32) For existing EHR systems:

(a) Is the system able to distinguish between "uses" and "disclosures" as those terms are defined under the Privacy Rule at 45 CFR 160.103? (Note that the term "disclosure" includes, but is not limited to, the sharing of

information between a hospital and physicians who may have staff privileges but who are not members of its workforce).

(b) If the existing system only records access to information without identifying whether such access represents a use or disclosure, what information is recorded about each instance of access? How long is such information retained? What would be the burden for covered entities to retain the information for three years? Once collected, what additional costs or other resources would be required to maintain the data for each subsequent year? At what point would retention of the information be excessively burdensome? OCR requests specific examples and cost estimates, where available.

(c) If the system is able to distinguish between uses and disclosures of information, what details regarding each disclosure are automatically collected by the system (*i.e.*, collected without requiring any additional manual input by the person making the disclosure)? What information, if any, is manually entered by the person making the disclosure or accessing the information?

(d) If the system is able to distinguish between uses and disclosures of information, what data elements are automatically collected by the system for uses (*i.e.*, collected without requiring any additional manual input by the person making the disclosure)? What information, if any, is manually entered by the person making the use?

(e) If the system is able to distinguish between uses and disclosures of information, does it record a description of disclosures in a standardized manner (for example, does the system offer or require a user to select from a limited list of types of disclosures)? If yes, is the feature being utilized? What are the benefits and drawbacks?

(f) To what extent do covered entities maintain a single, centralized EHR system versus a decentralized system (*e.g.*, different departments maintain different EHR systems, and an accounting of disclosures for TPO would need to be tracked for each system)? To what extent are covered entities that currently use decentralized systems planning to migrate to centralized systems or vice versa? How is the industry mix of centralized and decentralized systems likely to change over the next five or ten years?

(g) Do existing EHR systems automatically generate an accounting of disclosures under the current Privacy Rule (*i.e.*, does the system account for disclosures other than to carry out TPO)? If so, what would be the additional burden to also account for

<sup>25</sup> 76 FR 31426 (May 31, 2011). Available at <https://www.gpo.gov/fdsys/pkg/FR-2011-05-31/pdf/2011-13297.pdf>.

<sup>26</sup> <https://www.healthit.gov/hitac/events/policy-privacy-security-tiger-team-accounting-disclosures-virtual-hearing>.

disclosures to carry out TPO? If not, to what extent do covered entities use a separate system or module to generate an accounting of disclosures, and does the system interface with the EHR system? OCR requests cost estimates, where available.

(33) If an EHR is not currently able to account for disclosures of an EHR to carry out TPO, what would be the burden, in time and financial costs, for covered entities and/or their vendors to implement such a feature?

(34) For covered entities already planning to adopt new EHRs, to what extent would a requirement to track TPO disclosures affect the cost of the new system?

(35) A covered entity's Notice of Privacy Practices must inform individuals of the right to obtain an accounting of disclosures. Is this notice sufficient to make patients aware of this right? If not, what actions by OCR could effectively raise awareness?

(36) Why do individuals make requests for an accounting of disclosures under the current rule? Why would individuals make requests for an accounting of TPO disclosures made through EHRs?

(37) What data elements should be provided in an accounting of TPO disclosures, and why? How important is it to individuals to know the *specific* purpose of a disclosure—*i.e.*, would it be sufficient to describe the purpose generally (*e.g.*, for “for treatment,” “for payment,” or “for health care operations purposes”), or is more detail necessary for the accounting to be of value? To what extent are individuals familiar with the range of activities that constitute “health care operations?” On what basis do commenters make this assessment?

(38) How frequently do individuals who obtain an accounting of disclosures request additional information not currently required to be included in the accounting (*e.g.*, information about internal uses or about disclosures for TPO)? What additional information do they request, and do covered entities provide the additional information? Why or why not?

(39) If covered entities are unable to modify existing systems or processes to generate a full accounting of disclosures for TPO (*e.g.*, because modification would be prohibitively costly), should OCR instead require covered entities to conduct and document a diligent investigation into disclosures of PHI upon receiving an individual's request for an accounting of disclosures for TPO? If not, are there certain circumstances or allegations that should trigger such an investigation and

documentation by a covered entity? How much time should a covered entity be allowed to conduct and provide the results of such an investigation?

(40) If OCR requires or permits covered entities to conduct an investigation into TPO disclosures in lieu of providing a standard accounting of such disclosures, what information should the entities be required to report to the individual about the findings of the investigation? For example, should OCR require covered entities to provide individuals with the names of persons who received TPO disclosures and the purpose of the disclosures?

(41) The HITECH Act section 13405(c) only requires the accounting of disclosures for TPO to include disclosures through an EHR. In its rulemaking, should OCR likewise limit the right to obtain an accounting of disclosures for TPO to PHI maintained in, or disclosed through, an EHR? Why or why not? What are the benefits and drawbacks of including TPO disclosures made through paper records or made by some other means such as orally? Would differential treatment between PHI maintained in other media and PHI maintained electronically in EHRs (where only EHR related accounting of disclosures would be required) disincentivize the adoption of, or the conversion to, EHRs?

(42) Please provide any other information that OCR should consider when developing a proposed rule on accounting for disclosures for TPO.

#### *d. Notice of Privacy Practices*

The Privacy Rule requires covered providers and health plans to develop a Notice of Privacy Practices (NPP) that describes individuals' health information privacy rights and how their health information may be used and disclosed by the covered entity.<sup>27</sup> Covered entities are required to provide their NPPs to individuals, consistent with the specific requirements of the Privacy Rule, including prominent display on their websites. In addition, a covered health care provider that has a direct treatment relationship with the individual must clearly and prominently post the NPP in physical service delivery locations. Providers must also provide the NPP to individuals by the date of first service delivery, and to any individual upon request.

In addition, the Privacy Rule requires covered providers that have a direct treatment relationship with an individual to make a good faith effort to obtain a written acknowledgement of receipt of the provider's NPP. If

providers are unable to obtain the written acknowledgement, they must document their good faith efforts and the reason for not obtaining an individual's acknowledgment, and the provider must maintain the documentation or sufficient proof to support compliance with the requirements for six years.<sup>28</sup> OCR established the requirement to make a good faith attempt to obtain a written acknowledgment in the August 14, 2002, final Privacy Rule modifications (67 FR 53182). That final rule strengthened the notice requirements, in part, to replace the previous requirement to obtain an individual's consent for uses and disclosures of PHI for treatment, payment, and health care operations, which would have created unnecessary barriers to the provision of health care and other routine and important health sector activities. The written acknowledgment process was intended to provide an opportunity for the individual to review the NPP, including the individual's privacy rights, to discuss any concerns related to the privacy of her or his PHI, and to request additional restrictions or confidentiality of communications.

The questions below seek public input on whether the signature and recordkeeping requirements should be eliminated to reduce burden on providers and to free up time and resources for providers to spend on treatment and care coordination. The questions also ask how the NPP requirements might be modified in other ways to alleviate covered entity burden without compromising transparency regarding providers' privacy practices or an individual's awareness of his or her rights.

(43) What is the burden, in economic terms, for covered health care providers that have a direct treatment relationship with an individual to make a good faith effort to obtain an individual's written acknowledgment of receipt of the provider's NPP? OCR requests estimates of labor hours and any other costs incurred, where available.

(44) For what percentage of individuals with whom a direct treatment provider has a relationship is such a covered health care provider unable to obtain an individual's written acknowledgment? What are the barriers to obtaining it?

(45) How often do individuals and covered entities mistake the signature or acknowledgment line that accompanies NPPs as contracts, waivers of rights, or required as a condition of receiving services? What conflicts have arisen

<sup>27</sup> 45 CFR 164.520.

<sup>28</sup> 45 CFR 164.520(c)(2)(ii) and (e).

because of these or other misunderstandings?

(46) What other state and federal laws, guidelines or standards require covered health care providers to obtain the patient's acknowledgement or signature on a document at their first visit? How many of those documents require patient signatures? What is the nature of those other documents that require signatures?

(47) How often are NPPs bundled with other documents at patient "intake" and with how many other pages of documents? How often are NPPs printed with non-NPP materials, either on the same page, or as a continuation of one integrated document, or as being physically attached to other documents? What is the nature of these non-NPP materials? How often, if at all, are covered health care providers required to have the patient sign updated versions of these forms (e.g., annually, each visit, no subsequent updates required)? Are electronic signatures permitted for these forms? If so, does this make the process less burdensome?

(48) If NPP training is part of your general annual training, how much of this training cost do you estimate your organization spends to train covered entity staff on their obligations to seek and maintain documents related to the NPP acknowledgment requirements?

(49) What is the burden, in economic terms, for covered health care providers to maintain documentation of the acknowledgment or the good faith effort to obtain written acknowledgment and the reason why the acknowledgment was not obtained? What alternative methods might providers find useful to document that they provided the NPP? For example, to what extent would the use of a standard patient intake checklist reduce the burden?

(50) What use, if any, do covered health care providers make of the signed NPP forms, or documentation of good faith efforts at securing written acknowledgments, that the Privacy Rule requires providers to maintain?

(51) What benefits or adverse consequences may result if OCR removes the requirement for a covered health care provider that has a direct treatment relationship with an individual to make a good faith effort to obtain an individual's written acknowledgment of the receipt of the provider's NPP? Please specify whether identified benefits or adverse consequences would accrue to individuals or covered providers.

(52) Are there modifications to the content and provision of NPP requirements that would lessen the

burden of compliance for covered entities while preserving transparency about covered entities' privacy practices and individuals' awareness of privacy rights? Please identify specific benefits and burdens to the covered entity and individual, and offer suggested modifications.

(53) With the assistance of consumer-oriented focus groups, OCR has developed several model NPPs, available at <https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/model-notices-privacy-practices/index.html>, that clearly identify, in a consumer-friendly manner, an individual's HIPAA rights and a covered entity's ability to use and disclose PHI.

(a) While covered entities are required to provide individuals an NPP, use of OCR's model NPPs is optional. Do covered entities use these model NPPs? Why or why not?

(b) OCR has received anecdotal evidence that individuals are not fully aware of their HIPAA rights. What are some ways that individuals can be better informed about their HIPAA rights and how to exercise those rights? For instance, should OCR create a safe harbor for covered entities that use the model NPPs by deeming entities that use model NPPs compliant with the NPP content requirements? Would a safe harbor create any unintended adverse consequences?

(c) Should more specific information be required to be included in NPPs than what is already required? If so, what specific information? For example, would a requirement of more detailed information on the right of patients to access their medical records (and related limitations of what can be charged for copies) be useful?

(d) Please identify other specific recommendations for improving the NPP text or dissemination requirements to ensure individuals are informed of their HIPAA rights.

#### *e. Additional Ways To Remove Regulatory Obstacles and Reduce Regulatory Burdens To Facilitate Care Coordination and Promote Value-Based Health Care Transformation*

As noted at the beginning of this RFI, OCR seeks public input on ways to modify the HIPAA Rules to remove regulatory obstacles and decrease regulatory burdens in order to facilitate efficient care coordination and/or case management and promote the transformation to value-based health care, while preserving the privacy and security of PHI. Specifically:

(54) In addition to the specific topics identified above, OCR welcomes additional recommendations for how

the Department could amend the HIPAA Rules to further reduce burden and promote coordinated care.

(a) What provisions of the HIPAA Rules may present obstacles to, or place unnecessary burdens on, the ability of covered entities and/business associates to conduct care coordination and/or case management? What provisions of the HIPAA Rules may inhibit the transformation of the health care system to a value-based health care system?

(b) What modifications to the HIPAA Rules would facilitate efficient care coordination and/or case management, and/or promote the transformation to value-based health care?

(c) OCR also broadly requests information and perspectives from regulated entities and the public about covered entities' and business associates' technical capabilities, individuals' interests, and ways to achieve these goals.

This is a request for information only. Respondents are encouraged to provide complete but concise responses to the questions outlined above. OCR also requests that commenters indicate throughout their responses the questions to which they are responding. OCR notes that a response to every question is not required. This request for information is issued solely for information and planning purposes; it does not constitute a notice of proposed rulemaking.

### **III. Collection of Information Requirements**

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. This request for information constitutes a general solicitation of comments. In accordance with the implementing regulations of the Paperwork Reduction Act (PRA) at 5 CFR 1320.3(h)(4), information subject to the PRA does not generally include "facts or opinions submitted in response to general solicitations of comments from the public, published in the **Federal Register** or other publications, regardless of the form or format thereof, provided that no person is required to supply specific information pertaining to the commenter, other than that necessary for self-identification, as a condition of the agency's full consideration of the comment." Consequently, this document need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: December 10, 2018.

**Alex M. Azar II,**

*Secretary, Department of Health and Human  
Services.*

[FR Doc. 2018-27162 Filed 12-12-18; 11:15 am]

**BILLING CODE 4153-01-P**

# Notices

Federal Register

Vol. 83, No. 240

Friday, December 14, 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

### Agricultural Marketing Service

[Doc. No. AMS-FGIS-18-0076]

#### Designation for the Georgia Area Consisting of the Entire State of Georgia

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice.

**SUMMARY:** The Agricultural Marketing Service (AMS) is announcing the designation of D.R. Schaal Agency, Inc. (Schaal) to provide official services under the United States Grain Standards Act (USGSA), as amended. The realignment of offices within the U.S.

Department of Agriculture authorized by the Secretary's Memorandum dated November 14, 2017, eliminates the Grain Inspection, Packers and Stockyards Administration (GIPSA) as a standalone agency. The grain inspection activities formerly part of GIPSA are now organized under AMS.

**DATES:** Applicable Date: October 1, 2018.

**ADDRESSES:** Sharon Lathrop, Compliance Officer, USDA, AMS, FGIS, QACD, 10383 North Ambassador Drive, Kansas City, MO 64153.

**FOR FURTHER INFORMATION CONTACT:**

Sharon Lathrop, 816-891-0415, [Sharon.L.Lathrop@ams.usda.gov](mailto:Sharon.L.Lathrop@ams.usda.gov) or [FGISQACD@ams.usda.gov](mailto:FGISQACD@ams.usda.gov).

*Read Applications:* All applications and comments are available for public inspection at the office above during regular business hours (7 CFR 1.27(c)).

**SUPPLEMENTARY INFORMATION:** In the April 17, 2017, **Federal Register** (82 FR 18101), AMS requested applications for designation to provide official services in the Georgia Area.

The current official agency designated in the Georgia Area, the Georgia

Department of Agriculture (GDA), and Schaal were the only applicants for designation to provide official services in the Georgia Area. As a result, AMS asked for additional comments in the July 24, 2017, **Federal Register** (82 FR 34276).

On September 12, 2018, the GDA rescinded its application for designation to provide official services in the Georgia Area. This left Schaal as the only remaining applicant for designation to provide official services in the Georgia Area. AMS evaluated the designation criteria in section 7(f) of the USGSA (7 U.S.C. 79(f)) and determined that Schaal is qualified to provide official services in the geographic area specified in the **Federal Register** on April 17, 2017. The designation to provide official services in the Georgia Area is effective October 1, 2018, and will be incorporated into Schaal's current designation which is effective from October 1, 2016, to September 30, 2021.

Interested persons may obtain official services by contacting this agency at the following telephone number:

Official agency	Headquarters location and telephone	Designation start	Designation end
Schaal .....	Belmond, IA, 641-444-3122 .....	10/1/2016	9/30/2021

Section 7(f) of the USGSA authorizes the Secretary to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services (7 U.S.C. 79 (f)).

**Authority:** 7 U.S.C. 71-87k.

Dated: December 11, 2018.

**Greg Ibach,**

*Under Secretary, Marketing and Regulatory Programs.*

[FR Doc. 2018-27142 Filed 12-13-18; 8:45 am]

**BILLING CODE 3410-02-P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

[Document Number AMS-SC-18-0089]

#### Meeting of the Fruit and Vegetable Industry Advisory Committee

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, as amended, the Agricultural Marketing Service (AMS), U.S. Department of Agriculture (USDA), is announcing a meeting of the Fruit and Vegetable Industry Advisory Committee (Committee). The meeting is being convened to examine the full spectrum of fruit and vegetable industry issues and provide recommendations and ideas to the Secretary of Agriculture on how the U.S. Department of Agriculture

(USDA) can tailor programs and services to better meet the needs of the U.S. produce industry.

**DATES:** The Committee will meet in-person on Wednesday, January 30, 2019, from 8:30 a.m. to 5:00 p.m. Eastern Time (ET), and Thursday, January 31, 2019, from 8:30 a.m. to 1:00 p.m., ET. In-person oral comments will be heard on Wednesday, January 30, 2019, and possibly on Thursday, January 31, 2019. The deadline to submit written comments and/or sign up for oral comments is 11:59 p.m. ET, January 7, 2019.

**ADDRESSES:** The Committee meeting will be held at the Hyatt Regency Crystal City Hotel, 2799 Jefferson Davis Highway, Arlington, Virginia 22202. Detailed information pertaining to the meeting can be found at: <https://www.ams.usda.gov/about-ams/facas-advisory-councils/fviac>.



**FOR FURTHER INFORMATION CONTACT:**

Marlene Betts, Fruit and Vegetable Industry Advisory Committee, USDA, AMS, Specialty Crop Programs, 1400 Independence Avenue SW, Room 2077-S, STOP 0235, Washington, DC 20250-0235; Telephone: (202) 720-5057; Email: [SCPFVIAC@ams.usda.gov](mailto:SCPFVIAC@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** Pursuant to the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2), the Secretary of Agriculture (Secretary) established the Committee in 2001 to examine the full spectrum of issues faced by the fruit and vegetable industry and to provide suggestions and ideas to the Secretary on how USDA can tailor its programs to meet the fruit and vegetable industry's needs. The committee was reestablished in March 2018 for a two-year period.

The AMS Deputy Administrator for the Specialty Crops Program serves as the Committee's Executive Secretary, leading the effort to administer the Committee's activities. Representatives from USDA mission areas and other government agencies affecting the fruit and vegetable industry are periodically called upon to participate in the Committee's meetings as determined by the Committee. AMS is giving notice of the Committee meeting to the public so that they may attend and present their views. The meeting is open to the public.

Agenda items may include, but are not limited to, welcome and introductions, administrative matters, consideration of topics for potential working group discussion and proposal, and presentations by subject matter experts as requested by the Committee.

**Public Comments:** Comments should address specific topics noted on the meeting agenda.

**Written Comments:** Written public comments will be accepted on or before 11:59 p.m. ET on January 7, 2019, via <http://www.regulations.gov>: Document #AMS-SC-18-0089. Comments submitted after this date will be provided to AMS, but the Committee may not have adequate time to consider those comments prior to the meeting. AMS-Specialty Crop Programs strongly prefers that comments be submitted electronically. However, written comments may also be submitted (*i.e.*, postmarked) via mail to the person listed in the **FOR FURTHER INFORMATION CONTACT** section by or before the deadline.

**Oral Comments:** The Committee is providing the public an opportunity to provide oral comments and will accommodate as many individuals and organizations as time permits. Persons or organizations wishing to make oral

comments must pre-register by 11:59 p.m. ET, January 7, 2019, and can register for only one speaking slot. Instructions for registering and participating in the meeting can be found by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section by or before the deadline.

**Meeting Accommodations:** The Hyatt Regency Crystal City is ADA compliant and the USDA provides reasonable accommodations to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in this public meeting, please notify the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Determinations for reasonable accommodations will be made on a case-by-case basis.

Dated: December 11, 2018.

**Bruce Summers,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 2018-27141 Filed 12-13-18; 8:45 am]

**BILLING CODE 3410-02-P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

[Doc. No. AMS-FGIS-18-0079]

#### Solicitation of Nominations for Members of the USDA Grain Inspection Advisory Committee

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice to solicit nominees.

**SUMMARY:** The Department of Agriculture's (USDA) Agricultural Marketing Service (AMS) is seeking nominations for individuals to serve on the USDA Grain Inspection Advisory Committee (Advisory Committee). The Advisory Committee meets no less than once annually to advise AMS on the programs and services it delivers under the U.S. Grain Standards Act (USGSA). Recommendations by the Advisory Committee help AMS better meet the needs of its customers who operate in a dynamic and changing marketplace. The realignment of offices within the U.S. Department of Agriculture authorized by the Secretary's Memorandum dated November 14, 2017, eliminates the Grain Inspection, Packers and Stockyard Administration (GIPSA) as a standalone agency. The grain inspection activities formerly part of GIPSA are now organized under AMS.

**DATES:** AMS will consider nominations received by January 28, 2019.

**ADDRESSES:** Submit nominations for the Advisory Committee by completing form AD-755 and send to:

- Kendra Kline, U.S. Department of Agriculture, 1400 Independence Ave. SW, Rm. 2043-S, Mail Stop 3614, Washington, DC 20250-3611;
- Email: [Kendra.C.Kline@usda.gov](mailto:Kendra.C.Kline@usda.gov); or
- Fax: 202-690-2333

Form AD-755 may be obtained via USDA's website: <http://www.gipsa.usda.gov/fgis/forms-fgis/ad755.pdf>.

**FOR FURTHER INFORMATION CONTACT:** Kendra Kline, telephone (202) 690-2410 or email [Kendra.C.Kline@usda.gov](mailto:Kendra.C.Kline@usda.gov).

**SUPPLEMENTARY INFORMATION:** As required by section 21 of the USGSA (7 U.S.C. 87j), as amended, the Secretary of Agriculture (Secretary) established the Advisory Committee on September 29, 1981, to provide advice on implementation of the USGSA. As specified in the USGSA, no member may serve successive terms.

The Advisory Committee consists of 15 members, appointed by the Secretary, who represent the interests of grain producers, processors, handlers, merchandisers, consumers, exporters, and scientists with expertise in research related to the policies in section 2 of the USGSA (7 U.S.C. 74). While members of the Advisory Committee serve without compensation, USDA reimburses them for travel expenses, including per diem in lieu of subsistence, for travel away from their homes or regular places of business in performance of Advisory Committee service (see 5 U.S.C. 5703).

A list of current Advisory Committee members and other relevant information are available on the USDA website at <https://www.gipsa.usda.gov/fgis/advisorycommittee.aspx>.

AMS is seeking nominations for individuals to serve on the Advisory Committee. Applications submitted during the previous nomination period, March 16, 2018–April 30, 2018, will be considered unless notification is provided the individual no longer is available for consideration.

Nominations are open to all individuals without regard to race, color, religion, gender, national origin, age, mental or physical disability, marital status, or sexual orientation. To ensure that recommendations of the Advisory Committee take into account the needs of the diverse groups served by the USDA, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

The final selection of Advisory Committee members and alternates is made by the Secretary.

Dated: December 11, 2018.

**Greg Ibach,**

*Under Secretary, Marketing and Regulatory Programs.*

[FR Doc. 2018-27139 Filed 12-13-18; 8:45 am]

**BILLING CODE 3410-02-P**

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

December 11, 2018.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by January 14, 2019 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW, Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: [OIRA\\_Submission@OMB.EOP.GOV](mailto:OIRA_Submission@OMB.EOP.GOV) or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602. Copies of the submission(s) may be obtained by calling (202) 720-8958.

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

### Animal and Plant Health Inspection Service

*Title:* Trichinae Certification Program.  
*OMB Control Number:* 0579-0323.

*Summary of Collection:* The Animal Health Protection Act (AHPA) of 2002 is the primary Federal law governing the protection of animal health. The law gives the Secretary of Agriculture broad authority to detect, control and eradicate pests or diseases of livestock or poultry. The AHPA is contained in Title X, Subtitle E, Sections 10401-18 of Public Law 107-171, May 13, 2002, the Farm Security and Rural Investment Act of 2002. *Trichinella spiralis* is a contagious nematode affecting animals and people. The disease, trichinellosis, is transmitted by consuming the meat of an infected animal. The Animal and Plant Health Inspection Service (APHIS) will collect information using a certificate site audit, program audit form, request for information during a spot audit, animal disposal plan and recordkeeping, animal movement record and recordkeeping, rodent control logbook and recordkeeping, trichinae herd certification feed mill quality assurance affidavit and recordkeeping, records for slaughter testing and recordkeeping, temporary withdrawal, and program withdrawal.

*Need and Use of the Information:* APHIS will collect information to certify swine are raised using practices that will reduce or eliminate *T spiralis* exposure. If this information is not collected, it will compromise APHIS' ability to determine the trichinae infection status of pork produced in the United States.

*Description of Respondents:* Business or other for-profit; State, Local or Tribal Government.

*Number of Respondents:* 66.

*Frequency of Responses:*

Recordkeeping; Reporting: On occasion.

*Total Burden Hours:* 521.

**Ruth Brown,**

*Departmental Information Collection  
Clearance Officer.*

[FR Doc. 2018-27097 Filed 12-13-18; 8:45 am]

**BILLING CODE 3410-34-P**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

[Docket No. APHIS-2016-0013]

### Changes to the National Poultry Improvement Plan Program Standards

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice of determination.

**SUMMARY:** We are updating the National Poultry Improvement Plan (NPIP) Program Standards. In a previous notice, we made available to the public for review and comment proposed changes to the NPIP Program Standards pertaining to the compartmentalization of primary poultry breeding establishments and approval of compartment components such as farms, feedmills, hatcheries, and egg depots. These changes will be added to the NPIP Program Standards.

**DATES:** Applicable February 12, 2019.

**FOR FURTHER INFORMATION CONTACT:** Dr. Denise Heard, DVM, Senior Coordinator, National Poultry Improvement Plan, VS, APHIS, USDA, 1506 Klondike Road, Suite 101, Conyers, GA 30094-5104; (770) 922-3496.

**SUPPLEMENTARY INFORMATION:** The National Poultry Improvement Plan (NPIP), also referred to below as "the Plan," is a cooperative Federal-State-Industry mechanism for controlling certain poultry diseases. The Plan consists of a variety of programs intended to prevent and control poultry diseases.

The regulations in 9 CFR parts 56, 145, 146, and 147 (referred to below as the regulations) contain the provisions of the Plan. The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA, also referred to as "the Department") amends these provisions from time to time to incorporate new scientific information and technologies within the Plan.

Because changes in diagnostic science, testing technology, and best practices for maintaining sanitation are continual, and the rulemaking process can be lengthy, certain provisions of the Plan are contained in an NPIP Program Standards document<sup>1</sup> rather than in the regulations. The NPIP Program Standards may be updated or revised via a notice-based process rather than by rulemaking.

The regulations in 9 CFR 145.45, 145.74, and 145.84 provide the basis for compartmentalization of primary poultry breeding establishments. Compartmentalization is a procedure that a country may implement to define and manage animal subpopulations of distinct health status within its territory, in accordance with the guidelines in the World Organization for Animal Health

<sup>1</sup> This document may be viewed on the NPIP website at <http://www.poultryimprovement.org/documents/ProgramStandardsAugust2014.pdf>, or by writing to the Service at National Poultry Improvement Plan, APHIS, USDA, 1506 Klondike Road, Suite 101, Conyers, GA 30094.

(OIE) Terrestrial Animal Health Code, for the purpose of disease control and international trade.

On July 12, 2016, we published a notice<sup>2</sup> in the **Federal Register** (81 FR 45121–45122, Docket No. APHIS–2016–0013) advising the public that we had prepared updates to the NPIP Program Standards. Specifically, we proposed to add provisions for compartmentalization of primary poultry breeding establishments and approval of compartment components, such as farms, feedmills, hatcheries, and egg depots. These proposed provisions included requirements for applying for compartmentalization of facilities and for facility design and management, as well as an outline of the auditing system APHIS proposed to use to evaluate compartments and their component operations.

We solicited comments for 30 days ending on August 11, 2016. We received six comments by that date. They were from poultry breeders and suppliers of breeding stock, egg producers, and veterinarians. All the commenters supported our proposed updates.

We are making one minor editorial change to the compartmentalization provisions that we are adding to the NPIP Program Standards. Specifically, we are clarifying that visitors to farms, feedmills, hatcheries, and egg depots must agree in writing to follow company-established protocols regarding personal items and food.

Therefore, we are updating the NPIP Program Standards as described in our previous notice and in this document.

#### Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection activities included in this notice will be approved by the Office of Management and Budget under control number 0579–0007.

#### E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this notice, please contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2483.

**Authority:** 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 10th day of December 2018.

**Kevin Shea,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2018–27068 Filed 12–13–18; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

[Docket No. APHIS–2018–0073]

#### Notice of Availability of a Pest Risk Analysis for the Importation of Fresh Guava Fruit From Taiwan Into the Continental United States

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice of availability.

**SUMMARY:** We are advising the public that we have prepared a pest risk analysis that evaluates the risks associated with importation of fresh guava fruit from Taiwan into the continental United States. Based on the analysis, we have determined that the application of one or more phytosanitary measures will be sufficient to mitigate the risks of introducing or disseminating plant pests or noxious weeds via the importation of fresh guava fruit from Taiwan. We are making the pest risk analysis available to the public for review and comment.

**DATES:** We will consider all comments that we receive on or before February 12, 2019.

**ADDRESSES:** You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2018-0073>.

- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2018–0073, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov/#!docketDetail;D=APHIS-2018-0073> or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

**FOR FURTHER INFORMATION CONTACT:** Mr. Tony Román, Senior Regulatory Policy Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 851–2242.

**SUPPLEMENTARY INFORMATION:** Under the regulations in “Subpart–Fruits and Vegetables” (7 CFR 319.56–1 through 319.56–12, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into or disseminated within the United States.

Section 319.56–4 contains a performance-based process for approving the importation of certain fruits and vegetables that, based on the findings of a pest risk analysis, can be safely imported subject to one or more of the five designated phytosanitary measures listed in paragraph (b) of that section.

APHIS received a request from the national plant protection organization (NPPO) of Taiwan to allow the importation of fresh guava fruit (*Psidium guajava*) into the continental United States. As part of our evaluation of Taiwan's request, we have prepared a pest risk assessment (PRA) to identify pests of quarantine significance that could follow the pathway of importation of fresh guava fruit into the continental United States from Taiwan. Based on the PRA, a risk management document (RMD) was prepared to identify phytosanitary measures that could be applied to the fresh guava fruit to mitigate the pest risk.

We have concluded that fresh guava fruit can be safely imported from Taiwan into the continental United States using one or more of the five designated phytosanitary measures listed in § 319.56–4(b). The NPPO of Taiwan would have to enter into an operational workplan with APHIS that spells out the daily procedures the NPPO will take to implement the measures identified in the RMD. These measures are summarized below:

- Importation in commercial shipments only,
- Registration of places of production and packinghouses with the NPPO of Taiwan,
- Regular inspections of places of production by the NPPO,
- Grove sanitation and trapping for fruit flies in places of production,
- Safeguarding and identification of the lot throughout the growing, packing and export process,

<sup>2</sup> To view the notice and comments we received, go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2016-0013>.

- Phytosanitary treatment (cold treatment or irradiation),
- Pre-export inspection by the NPPO and issuance of a phytosanitary certificate with an additional declaration, and
- Port of entry inspections.

Each of the pest risk mitigation measures that would be required, along with evidence of their efficacy in removing pests of concern from the pathway, are described in detail in the RMD.

Therefore, in accordance with § 319.56–4(c)(3), we are announcing the availability of our PRA and RMD for public review and comment. Those documents, as well as a description of the economic considerations associated with the importation of fresh guava fruit from Taiwan and a treatment evaluation document that supports the addition of new cold treatment schedules for *Bactrocera* spp. fruit flies in guava from Taiwan, may be viewed on the *Regulations.gov* website or in our reading room (see **ADDRESSES** above for a link to *Regulations.gov* and information on the location and hours of the reading room). You may request paper copies of these documents by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the subject of the analysis you wish to review when requesting copies.

After reviewing any comments we receive, we will announce our decision regarding the import status of fresh guava fruit from Taiwan in a subsequent notice. If the overall conclusions of our analysis and the Administrator's determination of risk remain unchanged following our consideration of the comments, then we will authorize the importation of fresh guava fruit from Taiwan into the continental United States subject to the requirements specified in the RMD.

**Authority:** 7 U.S.C. 1633, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 10th day of December 2018.

**Kevin Shea,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2018–27053 Filed 12–13–18; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

#### Broadband Pilot Program

**AGENCY:** Rural Utilities Service, Department of Agriculture.

**ACTION:** Funding Opportunity Announcement (FOA) and solicitation of applications.

**SUMMARY:** The Rural Utilities Service (RUS) announces its general policy and application procedures for funding under the broadband pilot program established pursuant to the Consolidated Appropriations Act, 2018 which provides loans, grants, and loan/grant combinations to facilitate broadband deployment in rural areas. In facilitating the expansion of broadband services and infrastructure, the pilot will fuel long-term rural economic development and opportunities in rural America. One of those opportunities is precision agriculture. The use of this technology requires a robust broadband connection. The awards made under this program will bring high speed broadband to the farms which will allow them to increase productivity.

Please note that the application process is designed so that an applicant must demonstrate financial and technical feasibility of the project and the entire operation of the applicant. Applicants that do not demonstrate financial or technical feasibility will not be considered for an award.

**DATES:** The Agency will finalize the application window by notice in the **Federal Register** and *Grants.gov* on February 22, 2019. Please note there are three funding categories with each category having different application windows. Please refer to the specific funding category for the appropriate application deadline.

**ADDRESSES:** *Application Submission:* The application system for electronic submissions will be available at <https://reconnect.usda.gov>.

*Electronic submissions:* Electronic submissions of applications will allow for the expeditious review of an Applicant's proposal. As a result, all Applicants must file their application electronically.

**FOR FURTHER INFORMATION CONTACT:** For general inquiries, contact Chad Parker, Assistant Administrator Telecommunications Program, Rural Utilities Service, U.S. Department of Agriculture (USDA), email: [chad.parker@wdc.usda.gov](mailto:chad.parker@wdc.usda.gov), telephone (202) 720–9554. You may obtain additional information regarding applications at <https://reconnect.usda.gov>.

#### SUPPLEMENTARY INFORMATION:

**Authority:** This solicitation is issued pursuant to the Consolidated Appropriations Act, 2018, Pub. L. 115–141, and the Rural Electrification Act of 1936, 7 U.S.C. 901 *et seq.*

## Overview

*Federal Agency:* Rural Utilities Service, USDA.

*Funding Opportunity Title:* Rural eConnectivity Pilot Program (ReConnect Program).

*Announcement Type:* Funding Opportunity Announcement (FOA) and solicitation of applications.

*Catalog of Federal Domestic Assistance (CFDA) Number:* Rural eConnectivity Pilot Program (ReConnect Program)—10.752.

## Items in Supplementary Information

- I. Overview
- II. Definitions
- III. Substantially Underserved Trust Areas
- IV. Funding Opportunity Description
- V. Eligibility Information
- VI. Application and Submission Information
- VII. Application Evaluation Criteria
- VIII. Notice of Proposed Funded Service Areas
- IX. Evaluation and Processing Procedures
- X. Award Administration Information
- XI. Other Information

### I. Overview

On March 23, 2018, Congress passed the Consolidated Appropriations Act 2018 (the FY2018 Appropriations), which established a broadband loan and grant pilot program, the Rural eConnectivity Pilot Program (hereinafter the ReConnect Program). One of the essential goals of the ReConnect Program is to expand broadband service to rural areas without sufficient access to broadband, defined as 10 megabits per second (Mbps) downstream and 1 Mbps upstream. For this purpose, Congress provided RUS with \$600 million and expanded its existing authority to make loans and grants. Additionally, the FY2018 Appropriations specifically authorized technical assistance to assist the Agency in expanding needed service to the most rural communities where 90 percent of the households are without sufficient access to broadband service.

To promote broadband in rural America, RUS encourages state and local jurisdictions to waive any fees associated with granting rights-of-ways and to assist applicants and awardees with satisfying any environmental requirements such as approval from the State Historical Preservation Office.

### II. Definitions

The terms and conditions provided in this FOA are applicable to and for purposes of this FOA only. Unless otherwise provided in the award documents, all financial terms not defined herein shall have the meaning as defined by Generally Accepted Accounting Principles.

*Administrator* means the RUS Administrator, or the Administrator's designee.

*Applicant* means an entity requesting funding under this FOA.

*Application* means the Applicant's request for federal funding, which may be approved in whole or part by RUS.

*Award documents* mean, as applicable, all associated grant agreements, loan agreements, or loan/grant agreements.

*Award* means a grant, loan, or loan/grant combination made under this FOA.

*Awardee* means a grantee, borrower, or borrower/grantee that has applied and been awarded federal assistance under this FOA.

*Broadband loan* means, for purposes of this FOA, a loan that has been approved or is currently under review by RUS after the beginning of Fiscal Year 2000 in the Telecommunications Infrastructure Program, Farm Bill Broadband Program, or the Broadband Initiatives Program. Loans that were approved and then subsequently fully de-obligated are not included in this definition.

*Broadband service* means any technology as having the capacity to transmit data to enable a subscriber to the service to originate and receive high-quality voice, data, graphics and video.

*Business* means a commercial or mercantile activity engaged in as a means of livelihood. For purposes of this FOA, farms will not be counted as businesses for scoring purposes.

*CALEA* means the Communications Assistance for Law Enforcement Act, 47 U.S.C. 1001 *et seq.*

*Composite economic life* means the weighted (by dollar amount of each class of facility) average economic life of all classes of facilities necessary to complete construction of the broadband facilities in the proposed funded service area.

*Critical community facilities* means public facilities that provide community services essential for supporting the safety, health, and well-being of residents, including, but not limited to, emergency response and other public safety activities, hospitals and clinics, libraries and schools.

*Current ratio* means the current assets divided by the current liabilities.

*Debt service coverage ratio* (DSCR) means (Total Net Income or Margins + Interest Expense – Allowance for Funds Used during Construction + Depreciation + Amortization)/(Interest on Funded Debt + Other Interest + Principal Payment on Debt and Capital Leases).

*Economic life* means the estimated useful service life of an asset as determined by RUS.

*Eligible service area* means any proposed funded service area where 90 percent of the households to be served do not have sufficient access to broadband. For eligibility purposes, if an applicant is applying for multiple proposed funded service areas, each service area will be evaluated on a stand-alone basis.

*Equity* means total assets minus total liabilities as reflected on the Applicant's balance sheet.

*Farm* means any establishment from which \$1,000 or more of agricultural products were sold or would normally be sold during the year.

*Forecast period* means the five-year period of projections in an application, which shall be used by RUS to determine financial and technical feasibility of the application.

*GAAP* means accounting principles generally accepted in the United States of America.

*Grant* means any federal assistance in the form of a grant made under this FOA.

*Grant agreement* means the grant contract and security agreement between RUS and the Awardee securing the Grant awarded under this FOA, including any amendments thereto, available for review at <https://reconnect.usda.gov>.

*Loan* means any federal assistance in the form of a loan made under this FOA.

*Loan agreement* means the loan contract and security agreement between RUS and the Awardee securing the Loan, including all amendments thereto, available for review at <https://reconnect.usda.gov>.

*Loan/grant* means any federal assistance in the form of a loan/grant combination made under this FOA.

*Loan/grant agreement* means the loan/grant contract and security agreement between RUS and the Awardee securing the Loan/grant, including all amendments thereto available at <https://reconnect.usda.gov>.

*Non-funded service area* means any area in which the applicant offers service or intends to offer service during the forecast period but is not a part of its proposed funded service area.

*Pre-application expenses* means any reasonable expenses, as determined by RUS, incurred after the release of this FOA to prepare an Application or to respond to RUS inquiries about the Application.

*Premises* means households, farms and businesses.

*Project* means all of the work to be performed to bring broadband service to

all premises in the proposed funded service area under the Application, including construction, the purchase and installation of equipment, and professional services including engineering and accountant/consultant fees, whether funded by federal assistance, matching, or other funds.

*Proposed funded service area (PFSA)* means the area (whether all or part of an existing or new service area) where the applicant is requesting funds to provide broadband service. Multiple service areas will be treated as separate stand-alone service areas for the purpose of determining how much of the proposed funded service area does not have sufficient access to broadband. Each service area must meet the minimum requirements for the appropriate funding category to be an eligible area.

*RE Act* means the "Rural Electrification Act of 1936," as amended (7 U.S.C. 901 *et seq.*).

*Rural area* means any area which is not located within: (1) A city, town, or incorporated area that has a population of greater than 20,000 inhabitants; or (2) an urbanized area contiguous and adjacent to a city or town that has a population of greater than 50,000 inhabitants.

*RUS Accounting Requirements* shall mean compliance with U.S. GAAP, acceptable to RUS, the system of accounting prescribed by RUS Bulletin 1770B–1, and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, found at 2 CFR part 200. For all Awardees the term "grant recipient" in 2 CFR 200 shall also be read to encompass "loan recipient" and "loan/grant recipient", such that 2 CFR 200 shall be applicable to all Awardees under this FOA.

*Sufficient access to broadband* means any rural area that has fixed, terrestrial broadband service delivering at least 10 Mbps downstream and 1 Mbps upstream. Mobile and satellite services will not be considered in making the determination that households in the proposed funded service area do not have sufficient access to broadband.

*Tangible equity* means a measure of a company's capital, which is used by financial institutions to evaluate potential losses by eliminating intangible assets, goodwill and preferred stock from total equity.

*Tangible equity to total assets* means tangible equity divided by total assets.

*Times interest earned ratio* (TIER) means (Total Net Income or Margins + Total Interest Expense – Allowance for Funds Used during Construction) divided by (Total Interest

Expense – Allowance for Funds Used during Construction).

### III. Substantially Underserved Trust Areas

A. If the Administrator determines that a community within “trust land” (as defined in 38 U.S.C. 3765) has a high need for the benefits of the ReConnect Program, the Administrator may designate the community as a “substantially underserved trust area” (as defined in section 306F of the RE Act).

B. To receive consideration as a substantially underserved trust area, the applicant must submit to the Agency a completed application that includes all of the information requested in 7 CFR part 1700, subpart D. In addition, the application must identify the discretionary authorities within subpart D that it seeks to have applied to its application. Note, however, that given the prohibition on funding operating expenses in the ReConnect Program, requests for waiver of the equity requirements cannot be considered. In addition, due to the statutory requirements that established the ReConnect Program, waiver of the non-duplication requirements also cannot be considered.

### IV. Funding Opportunity Descriptions

#### A. Funding Categories

##### 1. 100 Percent Loan

The interest rate for a 100 percent loan will be set at a fixed 2 percent. The proposed funded service area for this category must be in an area where 90 percent of the households do not have sufficient access to broadband. Applicants must propose to build a network that is capable of providing service to every premise in the proposed funded service area at a speed of 25 Mbps downstream and 3 Mbps upstream. Tangible equity to total assets must be at least 20 percent at the end of the calendar year starting in the third year of the forecast period through the remainder of the forecast period.

The Agency anticipates that applications will be accepted on a rolling basis ending June 28, 2019. In the event two loan applications are received for the same proposed funded service area the application to arrive first will be considered first. The agency reserves the right to make funding offers or seek consultations to resolve partially overlapping applications. RUS may contact the applicant for additional information during the review process. If additional information is requested, the applicant will have up to 30 calendar days to submit the information.

If such information is not timely submitted, RUS may reject the application. Once all funds for this category have been expended for the ReConnect program, all remaining applications will be returned.

##### 2. 50 Percent Loan/50 Percent Grant Combination

The interest rate for the 50 percent loan component will be set at the Treasury rate for the remaining amortization period at the time of each advance of funds. The proposed funded service area for this category must be in an area where 90 percent of the households do not have sufficient access to broadband. Applicants must propose to build a network that is capable of providing service to every premises in the proposed funded service area at a speed of 25 Mbps downstream and 3 Mbps upstream. Applicants may propose substituting cash for the loan component at the time of application.

The Agency anticipates that applications will be accepted ending May 29, 2019. All eligible applications will be scored and, subject to Section V(C)(5)(b)(i) (overlapping applications) applications with the highest score will receive an award offer until all funds are expended for this category. RUS reserves the right to request additional information which would not affect scoring. If RUS requests additional information the applicant will have 30 calendar days to submit such information. If the information is not submitted, RUS may reject the application.

##### 3. 100 Percent Grant

The proposed funded service area for this category must be in an area where 100 percent of the households do not have sufficient access to broadband. Applicants must propose to build a network that is capable of providing service to every premise in the proposed funded service area at a speed of 25 Mbps downstream and 3 Mbps upstream. Applicants must provide a matching contribution equal to 25 percent of the cost of the overall project. The matching contribution can only be used for eligible purposes.

The Agency anticipates that applications will be accepted ending April 29, 2019. All eligible applications will be scored, and subject to Section V(C)(5)(b)(i) (overlapping applications) applications with the highest score will receive an award offer until all funds are expended for this category. RUS reserves the right to request additional information which would not affect scoring. If RUS requests additional information the applicant will have 30

calendar days to submit such information. If the information is not submitted, RUS may reject the application.

#### B. Available Funds

##### 1. General

Approximately \$560,000,000 in funding has been set aside for funding opportunities under this FOA.

##### 2. Funding Limits

Award amounts under this FOA will be limited as follows:

a. 100 Percent Loan. Up to \$200,000,000 is available for loans. The maximum amount that can be requested in an application is \$50,000,000.

b. 50 Percent Loan—50 Percent Grant. Up to \$200,000,000 is available for loan/grant combinations. The maximum amount that can be requested in an application is \$25,000,000 for the loan and \$25,000,000 for the grant. Loan and grant amounts will always be equal.

c. 100 Percent Grant. Up to \$200,000,000 is available for grants. The maximum amount that can be requested in an application is \$25,000,000.

d. Reserve. Additional budget authority is available for a reserve, which may be used for loans or grants under this FOA, or may be included in additional FOAs. The agency reserves the right to increase funding utilizing the application queue under this FOA should additional appropriations become available for the same purposes.

##### 3. Repooling

RUS retains the discretion to divert funds from one funding category to another.

##### 4. Award Period

Awards can be made until all funds have been expended in any given funding category. While the completion time will vary depending on the complexity of the project, award recipients must complete their projects within 5 years from the date funds are first made available.

##### 5. Type of Funding Instrument

The funding instruments will be grants, loans, and loan/grant combinations.

### V. Eligibility Information

#### A. General

Applicants must satisfy the following eligibility requirements to qualify for funding.

#### B. Eligible Entities

The following entities are eligible to apply for assistance:

1. States, local governments, or any agency, subdivision, instrumentality, or political subdivision thereof;

2. A territory or possession of the United States;

3. An Indian tribe (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b));

4. Non-profit entities;

5. For-profit corporations;

6. Limited liability companies; and

7. Cooperative or mutual organizations.

### C. Application Eligibility Factors

The following requirements must be met by all applications to be eligible for an award. Applications failing to comply with these requirements will be rejected.

#### 1. Audited Financial Statement

Applicants must submit unqualified, audited financial statements for the two previous years from the date the application is submitted. If an application is submitted in the first quarter of the calendar year and the most recent yearend audit has not been completed, the applicant can submit the two previous unqualified audits that have been completed. If qualified audits or audits containing a disclaimer or adverse opinion are submitted, the application will not be considered;

#### 2. Fully Completed Application

Applicants must submit a complete application and provide all supporting documentation required for the application.

#### 3. Timely Buildout Completion

A project is eligible only if the application demonstrates that the project can be completely built out within 5 years from the date funds are first made available.

#### 4. Technical Feasibility

Only projects that RUS determines to be technically feasible will be eligible for an award. Applicants will be required to submit a network design, network diagram, project costs and a buildout timeline, all certified by a professional engineer. The certification from the professional engineer must state that the proposed network can deliver broadband service at the required level of service to all premises in the proposed funded service area.

#### 5. Service Areas

##### a. Eligible Service Areas

i. Applicants must propose to provide broadband service directly to the premises in the proposed funded service

area that do not have sufficient access to broadband.

ii. If part or parts of the applicant's proposed funded service area are ineligible, RUS, in its sole discretion, may request that an applicant modify its application, if RUS believes the modification is feasible. Otherwise, RUS will reject the application.

##### b. Ineligible Service Areas

##### i. Overlapping Service Areas

RUS will not fund more than one project that serves any one given geographic area. Invariably, however, applicants will propose service areas that overlap, varying from small *de minimus* areas of the territory, but which may be significant with respect to households involved, to larger areas of the service territory, but which may contain few households or businesses, if any. As a result, devising a procedure which will cover every overlap circumstance cannot be done. Nevertheless, it is the agency's intent to make as many eligible applications viable for consideration as possible. That may mean the agency may: (1) Determine the overlap to be so insignificant that no agency action is necessary; (2) request one or more applications to be revised to eliminate the overlapping territory; (3) choose one application over another given the amount of assistance requested, the number of awards already chosen in the area or State, or the need for the project in the specific area due to other factors; or (4) simply choose the project that scores higher or in the judgement of the agency is more financially feasible.

##### ii. Prior Funded Service Areas

(A) RUS Broadband Loans. Service areas of borrowers that have RUS broadband loans, as defined in this FOA, are ineligible for all other applicants, and can be found at <https://reconnect.usda.gov>. However, RUS broadband borrowers that received funding to provide service in an area where the borrower is not currently providing sufficient access to broadband pursuant to this FOA would be eligible to apply for funding for these service areas if they have not defaulted on, and have materially complied with, in the sole discretion of RUS, their prior broadband loan requirements.

(B) RUS Community Connect Grants. Service areas that received grants under the RUS Community Connect Grant Program are eligible if they do not have sufficient access to broadband, except for those grants still under construction. Service areas still under construction

can be found at <https://reconnect.usda.gov>.

(C) RUS BIP Grants. Service areas that received a 100 percent grant under the RUS Broadband Initiatives Program (BIP) are eligible if they do not have sufficient access to broadband. However, if the applicant is the same BIP grantee, then the applicant may only request a 100 percent loan.

(D) State-funded Areas. Areas that received State funding to deploy broadband at a speed of at least 10 Mbps downstream and 1 Mbps upstream are ineligible areas under this FOA. Applicants must provide a map of the proposed funded service area to the appropriate State government office and the State government office must certify that either funds have or have not been allotted for the area. Applicants must submit the map and the State certification as part of the application for funding. For applications that are proposing to provide service in multiple States, a map and certification will be required for each State. If the map(s) and certification(s) are not submitted, RUS may reject the application.

(E) Connect America Fund Phase II Auction—Auction 903 (CAF II).

Funding for service areas of CAF II recipients can only be requested by the entity that is receiving the CAF II support, and such funding is limited to a 100% loan. The CAF II service areas can be found at <https://reconnect.usda.gov> and may also be found on the FCC web page.

#### 6. Fully Funded

A project is eligible only if, all project costs can be fully funded or accounted for in the application. To demonstrate this, applications must include evidence of all funding, other than the RUS award, necessary to support the project, such as bank account statements, firm letters of commitment from equity participants, or outside loans, which must evidence the timely availability of funds. If outside loans are used, they may only be secured by assets other than those used for collateral under this FOA. Equity partners that are not specifically identified by name will not be considered in the financial analysis of the application.

#### 7. Financial Feasibility and Sustainability

Only projects that RUS determines to be financially feasible and sustainable will be eligible for an award under this FOA. A project is financially feasible when the applicant demonstrates to the satisfaction of RUS that it will be able to generate sufficient revenues to cover expenses; will have sufficient cash flow



to service all debts and obligations as they come due; will have a positive ending cash balance as reflected on the cash flow statement for each year of the forecast period; and, by the end of the forecast period, will meet at least two of the following requirements: A minimum TIER requirement of 1.2, a minimum DSCR requirement of 1.2, and a minimum current ratio of 1.2. In addition, applicants must demonstrate positive cash flow from operations at the end of the forecast period.

If an applicant has no existing debt, is not proposing to borrow funds during the forecast period, and is applying only for grant funds, only the current ratio will be applied and not the TIER or DSCR. For this situation, applicants must meet the minimum current ratio requirement.

#### 8. Service Requirements

Facilities funded with grant funds must provide broadband service proposed in the application for the composite economic life of the facilities, as approved by RUS, or as provided in the Award Documents.

#### 9. Application Transparency

a. Pre-award Public Notice. To ensure transparency for the ReConnect Program, the Agency's mapping tool will include the following information from each application and be displayed for the public: (i) The identity of the applicant; (ii) the areas to be served; (iii) the type of funding requested; (iv) the status of the application; (v) the number of households without sufficient access to broadband; and (vi) a list of the census blocks to be served.

b. Post-award Public Notice. For all approved applications, the agency will post on its website: The name of the company receiving funding, the type of funding received, the location of the proposed funded service area and the purposes of the funding.

c. Post-award Reporting. Awardees will be required to submit semi-annual reports for three years after the completion of construction on the following information:

- (i) The number and location of residences and businesses that will receive service at or greater than the requirement for the appropriate funding category.
- (ii) the types of facilities constructed and installed;
- (iii) the speed of the data services being delivered;
- (iv) the average price of the data services being delivered in each proposed service area; and
- (v) the broadband adoption rate for each proposed service territory,

including the number of new subscribers generated from the facilities funded.

This information will be used to analyze the effectiveness of the funding provided and will allow the Agency to track adoption rates as new and improved broadband services are being provided.

#### D. Eligible Cost Purposes

##### 1. General

Award and matching funds must be used only to pay for eligible costs incurred post award, except for approved pre-application expenses. Eligible costs must be consistent with the cost principles identified in 2 CFR 200, Subpart E, Cost Principles. In addition, costs must be reasonable, allocable, and necessary to the project. Any application that proposes to use any portion of the award or matching funds for any ineligible cost may be rejected.

##### 2. Eligible and Ineligible Costs

###### a. Eligible Award Costs

Award funds may be used to pay for the following costs:

(i) To fund the construction or improvement of facilities, including buildings and land, required to provide broadband service, including facilities required for providing other services over the same facilities, such as equipment required to comply with CALEA;

(ii) To fund reasonable pre-application expenses in an amount not to exceed five percent of the award. Pre-application expenses may be reimbursed only if they are incurred after the publication date of this FOA, and properly documented. Pre-application expenses must be included in the first request for award funds, and will be funded with either grant or loan funds. If the funding category applied for has a grant component, then grant funds will be used for this purpose;

(iii) To fund the acquisition of an existing system that does not currently provide sufficient access to broadband for upgrading that system to meet the requirements of this FOA. The cost of the acquisition is limited to 40 percent of the amount requested. Acquisitions can only be considered in the 100 percent loan category; and

(iv) To fund terrestrial-based facilities for satellite broadband service, provided the applicant clearly identifies the PFSA, demonstrates the ability to provide 25 Mbps downstream and 3 Mbps upstream simultaneously to every premise in the PFSA, and offers

subscribers reasonable service plans that do not cap bandwidth usage.

##### (b) Ineligible Award Costs

Award funds may not be used for any of the following purposes:

(i) To fund operating expenses of the Awardee;

(ii) To fund costs incurred prior to the date on which the application was submitted, and with respect to eligible pre-application expenses, those costs incurred prior to the date of the publication date of this FOA;

(iii) To fund an acquisition of an affiliate, or the purchase or acquisition of any facilities or equipment of an affiliate. Note that if affiliated transactions are contemplated in the application, approval of the application does not constitute approval to enter into affiliated transactions, nor acceptance of the affiliated arrangements that conflict with the obligations under the award documents;

(iv) To fund the acquisition of a system previously funded by RUS;

(v) To fund the purchase or lease of any vehicle other than those used primarily in construction or system improvements;

(vi) To fund broadband facilities leased under the terms of an operating lease or an indefeasible right of use (IRU) agreement;

(vii) To fund the merger or consolidation of entities;

(viii) To fund costs incurred in acquiring spectrum as part of an FCC auction or in a secondary market acquisition. Spectrum that is part of an acquisition may be considered for loan funding;

(ix) To fund facilities that provide mobile services;

(x) To fund the acquisition of a system that is providing sufficient access to broadband; nor

(x) To refinance outstanding debt.

## VI. Application and Submission Information

### A. Online Application System

All applications under this FOA must be submitted through the RUS Online Application System to be located through <https://reconnect.usda.gov>. Additional information can be found in the Application Guidelines found at the above location. This website will be updated regularly.

### B. Registration

#### 1. Dun and Bradstreet Universal Numbering System (DUNS) Number

All applicants must register for a DUNS number as part of the application. The applicant can obtain



the DUNS number free of charge by calling Dun and Bradstreet. Go to <http://fedgov.dnb.com/webform> for more information on assignment of a DUNS number or confirmation.

## 2. System for Award Management (SAM)

Prior to submitting an application, the applicant must also register in SAM at <https://www.sam.gov/portal/SAM/#1> and supply a Commercial and Government Entity (CAGE) Code number as part of the application. SAM registration must be active with current data at all times, from the application review throughout the active Federal award funding period. To maintain active SAM registration, the applicant must review and update the information in the SAM database annually from the date of initial registration or from the date of the last update. The applicant must ensure that the information in the database is current, accurate, and complete.

## C. Contents of the Application

### 1. Requirements for the Applications

Given the varying expected closing dates for each funding type, and the inability of the agency to announce awards for a funding window while applicants have other applications in more than one funding type, applicants will be limited to ONE application for this FOA. A complete application will include the following information as requested in the RUS Online Application System:

- a. General information on the applicant and the project including:
  - (i) A description of the project that will be made public consistent with the requirements herein and
  - (ii) The estimated dollar amount of the funding request.
- b. An executive summary of the proposed project. This summary shall include, but not be limited to, a detailed description of existing operations, discussion about key management, description of the workforce, description of interactions between any parent, affiliated or subsidiary operation and a detailed description of the proposed project.
- c. A description of the proposed funded service area including the number of premises passed.
- d. Subscriber projections including the number of subscribers for broadband, video and voice services and any other service that may be offered; A description of the proposed service offerings, and the associated pricing plan that the applicant proposes to offer; and an explanation of how the proposed service offerings are affordable.

- e. A map, utilizing the RUS mapping tool located at <https://reconnect.usda.gov> of the proposed funded service areas identifying the areas without sufficient access to broadband and any non-funded service areas of the applicant.

- f. A description of the advertised prices of service offerings by competitors in the same area.

- g. A network design which includes a description of the proposed technology used to deliver the broadband service demonstrating that all premises in the proposed funded service area can be offered broadband service, a network diagram, a buildout timeline and milestones for implementation of the project, and a capital investment schedule showing that the system can be built within 5 years, all of which must be certified by a professional engineer who is certified in at least one of the states where there is project construction. The certification from the professional engineer must clearly state that the proposed network can deliver the broadband service to all premises in the proposed funded service area at the minimum required service level. In addition, if the applicant is requesting the points for providing a 100 Mbps upstream and 100 Mbps downstream, the certification must also state that the proposed system is capable of delivering this service to all premises; a list of all required licenses and regulatory approvals needed for the proposed project and how much the applicant will rely on contractors or vendors to deploy the network facilities. Note that in preparing budget costs for equipment and materials, RUS' Buy American requirements apply.

- h. Resumes of key management personnel, a description of the organization's readiness to manage a broadband services network, and an organizational chart showing all parent organizations and/or holding companies (including parents of parents, etc.), and all subsidiaries and affiliates.

- i. A legal opinion that: (1) Addresses the applicant's ability to enter into the award documents; (2) describes all material pending litigation matters; (3) addresses the applicant's ability to pledge security as required by the award documents and (4) addresses the applicant's ability to provide broadband service under state law.

- j. Summary and itemized budgets of the infrastructure costs of the proposed project, including if applicable, the ratio of loans to grants, and any other sources of outside funding.

- k. A detailed description of working capital requirements and the source of these funds.

- l. Historical financial statements for the last four years consisting of a balance sheet, income statement, and cash flow statement. If an entity has not been operating for four years, historical statements for the period of time the entity has been operating.

- m. Audited financial statements for the previous two calendar years. For governmental entities financial statements must be accompanied with certifications as to unrestricted cash that may be available on a yearly basis to the applicant. For startup operations formed from partnerships of existing utility providers, audited financial statements are required for the two previous years from each of the partners. In addition, the partners must guarantee any loan component of the requested funding.

- n. Pro Forma financial analysis, prepared in conformity with U.S. GAAP and the Agency's guidance on grant accounting found at <https://www.rd.usda.gov/files/AccountingGuidance10.pdf>. The Pro Forma should validate the sustainability of the project by including subscriber estimates related to all proposed service offerings; annual financial projections with balance sheets, income statements, and cash flow statements; supporting assumptions for a five-year forecast period and a depreciation schedule for existing facilities and those funded with federal assistance, matching, and other funds. This pro forma should indicate the committed sources of capital funding and include a bridge year prior to the start of the forecast period. This bridge year shall be used as a buffer between the historical financial information and the forecast period and is the year in which the application is submitted.

- o. All attachments required in the RUS Online application system;

- p. A scoring sheet, analyzing the scoring criteria set forth in this FOA;

- q. A list of all the applicant's outstanding and contingent obligations, including copies of existing notes, loan and security agreements, guarantees, any existing management or service agreements, and any other agreements with parents, subsidiaries and affiliates, including but not limited to debt instruments that use the applicant's assets, revenues or stock as collateral;

- r. All environmental information required to certify that the proposed construction meets the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) (NEPA), the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 *et seq.*) (NHPA), and the Endangered Species Act of 1973, as amended (16 U.S.C. 1534 *et seq.*) (ESA)

as applicable and any other information requested by the Agency. Information will be submitted in two parts.

Applicants must submit all information that is requested in the Agency's on-line applications system as well as provide any information requested by the Agency after applications are submitted.

s. Certification from the applicant that agreements with, or obligations to, investors do not breach the obligations to the government under the draft Award Documents, especially distribution requirements, and that any such agreements will be amended so that such obligations are made contingent to compliance with the Award Documents. Such certification should also specifically identify which, if any, provisions would need to be amended; and

t. If service is being proposed on tribal land, a certification from the proper tribal official that they are in support of the project and will allow construction to take place on tribal land. The certification must: (1) Include a description of the land proposed for use as part of the proposed project; (2) identify whether the land is owned, held in Trust, land held in fee simple by the Tribe, or land under a long-term lease by the Tribe; (3) if owned, identify the land owner; and (4) provide a commitment in writing from the land owner authorizing the applicant's use of that land for the proposed project. If no certification is provided, then this area will be ineligible for funding.

u. Any other information requested in the online application system.

#### *D. Material Representations*

The application, including certifications, and all forms submitted as part of the application will be treated as material representations upon which RUS will rely in awarding grants and loans.

### **VII. Application Evaluation Criteria**

#### *A. Evaluation Criteria*

Applications in the same funding category will be scored and ranked against the following criteria, and not against each other. However, applications for 50/50 loan/grant combos and 100 percent grants that cover the same proposed service area will be evaluated as described in Section V(C)(5)(b)(i) above.

#### **1. Rurality of Proposed Funded Service Area (25 Points)**

Points will be awarded for serving the least dense rural areas as measured by the population of the area per square mile. If multiple service areas are

proposed, the density calculation will be made on the combined areas as if they were a single area, and not the average densities. For population densities of 6 or less, 25 points will be awarded.

#### **2. Farms Served (20 Points)**

Applicants will receive 1 point for each farm that pre-subscribes for broadband service up to a maximum of 20 points. Applicants must have the head of the farm sign the pre-subscription form provided in the application system and submit them as part of their application.

#### **3. Performance of the Offered Service (20 Points)**

For projects that are proposing to build a network that is capable of providing at least 100 Mbps symmetrical service to all premises, 20 points will be awarded. The certification from the Professional Engineer must certify that the proposed system can deliver these speeds to every premises in the proposed funded service area.

#### **4. Businesses (15 Points)**

Applicants will receive 1 point for each business that pre-subscribes for broadband service up to a maximum of 15 points. Applicants must have the owner of the business sign the pre-subscription form provided in the application system and submit them as part of their application.

#### **5. Healthcare Centers (15 Points)**

For every healthcare center served 1 point will be awarded up to a maximum of 15 points. Healthcare centers will be counted using the GIS layer located in the RUS mapping tool at <https://reconnect.usda.gov>.

#### **6. Educational Facilities (15 Points)**

For every school served 1 point will be awarded up to a maximum of 15 points. Schools will be counted using the GIS layer provided in the RUS mapping tool located at <https://reconnect.usda.gov>.

#### **7. Critical Community Facilities (15 Points)**

For every critical community facility served 1 point will be awarded up to a maximum of 15 points. Critical community facilities will be counted using the GIS layer located in the RUS mapping tool at <https://reconnect.usda.gov>.

#### **8. Tribal Lands (5 Points)**

For applications where, at a minimum, 50 percent of the

geographical area of the proposed funded service area(s) is to provide service on tribal lands, 5 points shall be awarded. Tribal lands will be analyzed using the GIS layer located at [https://www.census.gov/geo/maps-data/data/cbf/cbf\\_aiannh.html](https://www.census.gov/geo/maps-data/data/cbf/cbf_aiannh.html). This layer is included in the RUS mapping tool.

#### **9. State Broadband Activity (20 Points)**

For projects that are in a State that has a broadband plan that has been updated within five years of the date of publication of this FOA, 10 points will be awarded. An additional 5 points will be awarded for projects located in states that do not restrict utilities from delivering broadband service, and 5 more points for projects located in states that expedite right-of-way and environmental requirements.

Applicants will be required to submit evidence from the appropriate State official that a broadband plan has been implemented and updated, that there are no restrictions on utilities providing broadband service, and that procedures are in place for expediting right-of-way and environmental requirements. If service is proposed in multiple states, then evidence must be submitted from each state to get the appropriate points.

### **VIII. Notice of Proposed Funded Service Areas**

#### *A. The Agency Will Publish a Public Notice of Each Application*

The application must provide a summary of the information required for such public notice including the following:

1. The identity of the applicant;
2. A map of each proposed funded service area showing the rural area boundaries and the areas without sufficient access to broadband using the Agency's Mapping Tool;
3. The amount and type of support requested;
4. The status of the review of the application;
5. The estimated number of households without sufficient access to broadband in each service area exclusive of satellite and mobile broadband service; and
6. A description of all the types of services that the applicant proposes to offer in each service area.

#### *B. Notification After the Application Has Been Received*

The Agency will publish the public notice on an Agency web page after the application has been submitted through the online application system and will remain on the web page for a period of 30 calendar days.

The notice will ask existing service providers to submit to the Agency, within this notice period, the following information:

1. The number of residential and business customers within the applicant's service area currently purchasing broadband service, defined as at a minimum speed of 10 Mbps downstream and 1 Mbps upstream, the rates of data transmission being offered, and the cost of each level of broadband service charged by the existing service provider;
2. The number of residential and business customers within the applicant's service area receiving voice and video services and the associated rates for these other services; and
3. A map showing where the existing service provider's services coincide with the applicant's service area using the Agency's Mapping Tool.

#### *C. Agency Determination of Sufficient Access to Broadband in Proposed Funded Service Area*

The Agency will use the information submitted to determine if there is sufficient access to broadband in any part of the proposed funded service area. Notwithstanding non-responses by actual and potential providers, the Agency will use all information available in evaluating the feasibility of the project.

#### *D. Treatment of Submitted Information*

The information submitted by an existing service provider will be treated as proprietary and confidential to the extent permitted under applicable law.

#### *E. Notice of Application Is Approved*

If an application is approved, an additional notice will be published on the agency's website that will include the following information:

1. The name of the entity receiving the financial assistance;
2. The type of assistance being received;
3. The purpose of the assistance and the location of the proposed funded service area; and
4. The semiannual reports submitted under Section X(B)(6)e of this FOA.

### **IX. Evaluation and Processing Procedures**

#### *A. Review of Application*

Applications will be evaluated using the criteria stated in Section V.C of this FOA. Public comments received with respect to an application's proposed funded service area will be reviewed and evaluated. Eligibility of proposed funded service areas will be verified by the Agency.

RUS also reserves the right to ask applicants for clarifying information and additional verification of assertions in the application. For those applications that RUS has selected for funding, RUS will send award documents.

#### *B. Review of Awardee Operations*

##### **1. Entities That Receive Funding Under This FOA**

For all entities that receive funding under this FOA, RUS may send a team to the awardee's facilities to complete a Management Analysis Profile (MAP) of the entire operation. MAPs are used by RUS as a means of evaluating an Awardee's strengths and weaknesses and ensuring that awardees are prepared to fulfill the terms of the award. Once an applicant accepts an award offer, RUS may schedule a site visit as soon as possible.

##### **2. Agency Right Not To Advance Funds**

RUS reserves the right not to advance funds until the MAP has been completed. If the MAP identifies issues that can affect the operation and completion of the project, those issues must be addressed to the satisfaction of RUS before funds can be advanced. Funding may be rescinded if following a MAP the agency determines that the awardee will be unable to meet the requirements of the award.

### **X. Award Administration Information**

#### *A. Award Notices*

Successful applicants will receive an offer letter and award documents from RUS following award notification. Applicants may view sample award documents at <https://reconnect.usda.gov>.

#### *B. Administrative Requirements*

##### **1. Pre-Award Conditions**

No funds will be disbursed under this program until all other sources of funding have been obtained and any other pre-award conditions have been met. Failure to obtain one or more sources of funding committed to in the Application or to fulfill any other pre-award condition within 90 days of award announcement may result in withdrawal of the award.

##### **2. Failure To Comply With Award Requirements**

If an Awardee fails to comply with the terms of the award as specified in the award documents, RUS may exercise rights and remedies.

##### **3. Advance Procedures**

RUS loan and grant advances are made at the request of the Awardee according to the procedures stipulated in the Award Documents. ALL MATCHING FUNDS OR CASH PROVIDED IN LIEU OF LOAN FUNDS MUST BE EXPENDED FIRST, FOLLOWED BY LOAN FUNDS, AND THEN BY GRANT FUNDS, EXCEPT FOR RUS APPROVED PRE-APPLICATION EXPENSES. Grant funds, if any, will be used for eligible pre-application expenses only on the first advance request. Accordingly, applications that do not account for such advance procedures in the Pro Forma five-year forecast may be rejected.

##### **4. Construction**

a. All project assets must comply with 7 CFR part 1788, and 7 CFR part 1970 located at <https://www.rd.usda.gov/publications/regulations-guidelines/regulations>, the ReConnect Program Construction Procedures located at <https://reconnect.usda.gov>, any successor regulations found on the agency's website, and any other guidance from the Agency.

b. The build-out of the project must be completed within five years from the date funds are made available. Build-out is considered complete when the network design has been fully implemented, the service operations and management systems infrastructure is operational, and the awardee is ready to support the activation and commissioning of individual customers to the new system.

##### **5. Servicing**

a. Awardees must make payments on the loan as required in the note and Award Documents.

b. Awardees must comply with all terms, conditions, affirmative covenants, and negative covenants contained in the Award Documents.

c. In the event of default of the Award Documents:

(i) A late charge may be charged on any payment not made in accordance with the terms of the loan.

(ii) The Agency may exercise any and all remedies provided in the Award Documents.

##### **6. Accounting, Monitoring, and Reporting Requirements**

a. Awardees must adopt a system of accounts for maintaining financial records acceptable to the Agency, as described in 7 CFR part 1770, subpart B.

b. Awardees must submit annual comparable audited financial statements along with a report on compliance and

on internal control over financial reporting, and management letter in accordance with the requirements of 7 CFR part 1773. The Certified Public Accountant (CPA) conducting the annual audit is selected by the borrower and must be satisfactory to RUS as set forth in 7 CFR 1773 Subpart B—RUS Audit Requirements.

c. Awardees must comply with all reasonable Agency requests to support ongoing monitoring efforts. The Awardee shall afford RUS, through its representatives, reasonable opportunity, at all times during business hours and upon prior notice, to have access to and the right to inspect: The Broadband System, any other property encumbered by the Award Documents, any and all books, records, accounts, invoices, contracts, leases, payrolls, timesheets, cancelled checks, statements, and other documents, electronic or paper of every kind belonging to or in the possession of the Awardee or in any way pertaining to its property or business, including its subsidiaries, if any, and to make copies or extracts therefore.

d. Awardee records shall be retained and preserved in accordance with the provisions of 7 CFR part 1770, subpart A.

e. Awardees must submit semiannual reports for 3 years after completion of the project, which must include the following:

(1) The purpose of the financing, including new equipment and capacity enhancements that support high-speed broadband access for educational institutions, health care providers, and public safety service providers (including the estimated number of end users who are currently using or forecasted to use the new or upgraded infrastructure);

(2) The progress towards fulfilling the objectives for which the assistance was granted, including:

(i) The number of residences and businesses that will receive service equal to or greater than the speed required for the appropriate funding category;

(ii) The types of facilities constructed and installed;

(iii) The speed of the broadband services being delivered;

(iv) The average price of the broadband services being delivered in each proposed service area;

(v) The broadband adoption rate for each proposed service territory, including the number of new subscribers generated from the facilities funded; and

#### 7. Assistance Instruments

a. Terms and conditions of loans, grants, or loan/grant combinations are set forth in the non-negotiable standard loan, grant, or loan/grant agreements and the corresponding note, and/or mortgage, if applicable, which may be found at <https://reconnect.usda.gov>.

b. Award Documents must be executed prior to any advance of funds.

c. Sample Award Documents can be found at <https://reconnect.usda.gov>.

#### 8. Loan and Loan/Grant Terms and Conditions

Among others, the following terms shall apply to the loans:

##### a. Interest Rate

If an applicant is applying for a 100% loan, the interest rate shall be fixed at 2%. If an applicant is applying for a 50/50 loan/grant combination, the loan shall bear interest at a rate equal to the cost of borrowing to the Department of Treasury for obligations, as determined by the government, of comparable maturity. The applicable interest rate will be set at the time of each advance.

##### b. Repayment Period

Unless the Applicant requests a shorter repayment period, loans must be repaid with interest within a period that, rounded to the nearest whole year, is equal to the expected Composite Economic Life of the project assets, as determined by RUS based upon acceptable depreciation rates, plus three years. Acceptable depreciation rates can be found in the ReConnect Program Constructions Procedures found at <https://reconnect.usda.gov>.

##### c. Amortization Period

Interest begins accruing on the date of each loan advance. All interest and principle payments will be deferred for a three-year period starting when funds are made available to be drawn by the Awardee. At the end of the three-year deferral period, accrued interest will be capitalized and added to the outstanding principal, and monthly payments will be established in an amount that amortizes the outstanding balance in equal payments over the remaining term of the loan.

##### d. Build-out Period

All proposed construction (including construction with matching and other funds) and all advance of funds must be completed no later than five years from the time funds are made available.

##### e. Fidelity Bonding

Applicants must agree to obtain a fidelity bond for 15 percent of the award amount. The fidelity bond must be obtained as a condition of award closing. RUS may reduce the percentage required if it determines that 15 percent

is not commensurate with the risk involved.

f. Loan Security. The loan portion of the award must be adequately secured, as determined by RUS.

(i) For Corporations and LLC's, the loan and loan/grant combinations must be secured by all assets of the Awardee. RUS must be given an exclusive first lien, in form and substance satisfactory to RUS, on all assets of the Awardee, including all revenues. RUS may share its first lien position with one or more lenders on a *pari passu* basis, except with respect to grant funds, if security arrangements are acceptable to RUS. Applicants must submit a certification that their prior lender or lienholder on any Awardee assets has already agreed to sign the RUS' standard intercreditor agreement or co-mortgage found at <https://reconnect.usda.gov>. Note that RUS will not consider sharing assets with any related party or affiliate of the Awardee. Moreover, given that RUS cannot renegotiate these standard agreements, Awardees that are unable to obtain sign-off on the security arrangements may have their awards rescinded within 60 days of the date the Awardee is made aware of the approval of its application.

(ii) For Tribal entities and municipalities, RUS will develop appropriate security arrangements.

(iii) Unless otherwise approved by RUS in writing, all property and facilities purchased with award funds must be owned by the Awardee.

g. Grant Security. The grant portion of the award must also be adequately secured, as determined by RUS.

(i) The government must be provided an exclusive first lien on all grant assets during the service obligation of the grant, and thereafter any sale or disposition of grant assets must comply with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, codified in 2 CFR part 200. Note that this part will apply to ALL grant funds of an Awardee, regardless of the entity status or type of organization.

(ii) All Awardees must repay the grant if the project is sold or transferred without RUS approval during the service obligation of the grant.

#### 9. Award Terms and Conditions

##### a. Scope

Awardees are required to comply with the requirements established herein. Any obligation that applies to the Awardee shall extend for the life of the award-funded facilities.

##### b. Sale or Lease of Project Assets

The sale or lease of any portion of the Awardee's facilities must be approved in writing by RUS.

**c. Certifications**

(i) The Applicant must certify that it is authorized to submit the application on behalf of the eligible entity(ies) listed in the Application; that the Applicant has examined the Application; that all information in the Application, including certifications and forms submitted, are, at the time furnished, true and correct in all material respects; that the entity requesting funding will comply with the terms, conditions, purposes, and federal requirements of the program; that no kickbacks were paid; and that a false, fictitious, or fraudulent statement or claim on the Application is grounds for denial or termination of an award, and/or possible punishment by a fine or imprisonment as provided in 18 U.S.C. § 1001 and civil violations of the False Claims Act (31 U.S.C. 3729 *et seq.*);

(ii) The Applicant must certify that it will comply with all applicable federal, tribal, state, and local laws, rules, regulations, ordinances, codes, orders, and programmatic rules and requirements relating to the project, and acknowledges that failure to do so may result in rejection or de-obligation of the award, as well as civil or criminal prosecution, if applicable, by the appropriate law enforcement authorities.

**10. Financial and Compliance Reporting Requirements**

Awardees must submit to RUS 30 calendar days after the end of each calendar year quarter, balance sheets, income statements, statements of cash flow, rate package summaries, and the number of customers taking broadband service on a per community basis utilizing RUS' on-line reporting system. These reports must be submitted throughout the loan amortization period or for the economic life of the facilities funded with a 100 percent grant.

In addition, Awardees will be required to submit annually updated service area maps through the RUS mapping tool showing the areas where construction has been completed and premises are receiving service until the entire proposed funded service area can receive the broadband service.

At the end of the project, Awardees must submit a service area map indicating that all construction has been completed as proposed in the application. If parts of the proposed funded service area have not been constructed, RUS may require a portion of the award to be rescinded or paid back.

**XI. Other Information**

**A. Discretionary Awards**

The government is not obligated to make any award as a result of this announcement and will fund only projects that are deemed likely to achieve the program's goals and for which funds are available.

**B. Environmental and National Historic Preservation Requirements**

Federal Agencies are required to analyze the potential environmental impacts, as required by the NEPA and the *NHPA* for Applicant projects or proposals seeking funding. All Applicants are required to complete an Environmental Questionnaire, provide a description of program activities and to submit all other required environmental documentation as requested in the application system or by the Agency after the application is submitted.

It is the Applicant's responsibility to obtain all necessary federal, tribal, state, and local governmental permits and approvals necessary for the proposed work to be conducted. Applicants are expected to design their projects so that they minimize the potential for adverse impacts to the environment. Applicants also will be required to cooperate with the granting agencies in identifying feasible measures to reduce or avoid any identified adverse environmental impacts of their proposed projects. The failure to do so may be grounds for not making an award.

Applications will be reviewed to ensure that they contain sufficient information to allow Agency staff to conduct a NEPA analysis so that appropriate NEPA documentation can be submitted to the appropriate federal and state agencies, along with the recommendation that the proposal is in compliance with applicable environmental and historic preservations laws. Applicants proposing activities that cannot be covered by existing environmental compliance procedures will be informed after the technical review stage whether NEPA compliance and other environmental requirements can otherwise be expeditiously met so that a project can proceed within the timeframes anticipated under the ReConnect Program.

If additional information is required after an application is accepted for funding, funds can be withheld by the agency under a special award condition requiring the Awardee to submit additional environmental compliance information sufficient for the Agency to assess any impacts that a project may have on the environment.

**C. De-Obligation**

The RUS reserves the right to de-obligate awards to Awardees under this FOA that demonstrate an insufficient level of performance, wasteful or fraudulent spending, or noncompliance with environmental and historic preservation requirements.

**D. Confidentiality of Applicant Information**

Applicants are encouraged to identify and label any confidential and proprietary information contained in their applications. The Agency will protect confidential and proprietary information from public disclosure to the fullest extent authorized by applicable law, including the Freedom of Information Act, as amended (5 U.S.C. 552), the Trade Secrets Act, as amended (18 U.S.C. 1905), the Economic Espionage Act of 1996 (18 U.S.C. 1831 *et seq.*), and CALEA (47 U.S.C. 1001 *et seq.*). Applicants should be aware, however, that the Consolidated Appropriations Act requires substantial transparency. For example, RUS is required to make publicly available on the internet a list of each entity that has applied for a loan or grant, a description of each application, the status of each application, the name of each entity receiving funds, and the purpose for which the entity is receiving the funds.

**E. Compliance With Applicable Laws**

Any recipient of funds under this FOA shall be required to comply with all applicable federal, tribal and state laws, including but not limited to:

1. The nondiscrimination and equal employment opportunity requirements of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e *et seq.*, 7 CFR pt. 15);

2. Section 504 of the Rehabilitation Act (29 U.S.C. 794 *et seq.*; 7 CFR pt. 15b);

3. The Age Discrimination Act of 1975, as amended (42 U.S.C. 6101 *et seq.*; 45 CFR pt. 90);

4. Executive Order 11375, amending Executive Order 11246, Relating to Equal Employment Opportunity (3 CFR pt. 102). *See* 7 CFR pts. 15 and 15b and 45 CFR pt. 90, RUS Bulletin 1790-1 ("Nondiscrimination among Beneficiaries of RUS Programs"), and RUS Bulletin 20-15:320-15 ("Equal Employment Opportunity in Construction Financed with RUS Loans");

5. The Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151 *et seq.*);

6. The Uniform Federal Accessibility Standards (UFAS) (Appendix A to 41 CFR subpart 101–19.6); and

7. The Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA and certain related federal environmental laws, statutes, regulations, and Executive Orders found in 7 CFR 1970.

A more complete list of such requirements can be found in the applicable Award Documents.

#### F. Communications Laws

Awardees will be required to comply with all applicable federal, tribal and state communications laws and regulations, including, for example, the Communications Act of 1934, as amended, (47 U.S.C. 151 *et seq.*) the Telecommunications Act of 1996, as amended (Pub. L. 104–104, 110 Stat. 56 (1996), and CALEA. For further information, see <http://www.fcc.gov>.

#### G. Executive Order 13132

It has been determined that this notice does not contain policies with federalism implications as that term is defined in Executive Order 13132.

#### H. Authorized Signatories

Only authorized grant and loan officers can bind the Government to the expenditure of funds.

#### I. Paperwork Reduction Act and Recordkeeping Requirements

Copies of all forms, regulations, and instructions referenced in this FOA may be obtained from RUS. Data furnished by the Applicants will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, the failure to provide data could result in program benefits being withheld or denied.

The Information Collection and Recordkeeping requirements contained in this FOA have been approved by an emergency clearance under OMB Control Number 0572–0152. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), RUS invites comments on this information collection for which the Agency intends to request approval from the Office of Management and Budget (OMB).

Comments on this notice must be received by February 12, 2019. 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 burden including the validity of the methodology and

assumption used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including 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—Regulations Management Team, U.S. Department of Agriculture, 1400 Independence Ave. SW, Stop 1522, Room 5162 South Building, Washington, DC 20250–1522.

*Title:* Rural eConnectivity Pilot Program (ReConnect Program).

*Type of Request:* New collection.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 6.77 hours per response.

*Respondents:* Businesses and other for-profits.

*Estimated Number of Respondents:* 2000.

*Estimated Number of Responses per Respondent:* 34.96.

*Estimated Total Annual Burden and Record Keeping Hours on Respondents:* 477,820 hours.

Copies of this information collection can be obtained from MaryPat Daskal, Rural Development Innovation Center—Regulations Management Team, at (202) 720–7853 or email: [marypat.daskal@wdc.usda.gov](mailto:marypat.daskal@wdc.usda.gov).

All responses to this information collection and recordkeeping notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: December 6, 2018.

**Christopher A. McLean,**

*Acting Administrator, Rural Utilities Service.*

[FR Doc. 2018–27038 Filed 12–13–18; 4:15 pm]

**BILLING CODE P**

### COMMISSION ON CIVIL RIGHTS

#### 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:** Announcement of meeting.

**SUMMARY:** Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Ohio Advisory Committee

(Committee) will hold a meeting via teleconference on Thursday January 17, 2019, from 2–3 p.m. EST for the purpose of reviewing received testimony and planning for future testimony on education funding in the state.

**DATES:** The meeting will be held on Thursday, January 17, 2019, at 2:00 p.m. EST.

*Public Call Information:* Dial: 888–254–3590, Conference ID: 3192445.

**FOR FURTHER INFORMATION CONTACT:** Melissa Wojnarowski, DFO, at [mwojnarowski@usccr.gov](mailto:mwojnarowski@usccr.gov) or 312–353–8311.

**SUPPLEMENTARY INFORMATION:** Members of the public can listen to the discussion. This meeting is available to the public through the above listed toll free number. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Programs Unit Office, U.S. Commission on Civil Rights, 230 S. Dearborn, Suite 2120, Chicago, IL 60604. They may also be faxed to the Commission at (312) 353–8324, or emailed to Carolyn Allen at [callen@usccr.gov](mailto:callen@usccr.gov). Persons who desire additional information may contact the Regional Programs Unit Office at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via [www.facadatabase.gov](http://www.facadatabase.gov) under the Commission on Civil Rights, Ohio Advisory Committee link. Persons interested in the work of this Committee are also directed to the Commission's website, <http://www.usccr.gov>, or may contact the Regional Programs Unit

office at the above email or street address.

**Agenda**

Welcome and Roll Call  
Discussion: Education Funding in Ohio  
Public Comment  
Adjournment

Dated: December 10, 2018.

**David Mussatt,**  
*Supervisory Chief, Regional Programs Unit.*  
[FR Doc. 2018–27063 Filed 12–13–18; 8:45 am]

**BILLING CODE P**

**DEPARTMENT OF COMMERCE**

**International Trade Administration**

**[A–533–863]**

**Certain Corrosion-Resistant Steel Products From India: Final Results of Antidumping Duty Administrative Review; 2016–2017**

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Commerce) determines that certain corrosion-resistant steel products (CORE) from India are being, or are likely to be sold, at less than normal value during the period of review (POR) January 4, 2016, through June 30, 2017.

**DATES:** Applicable December 14, 2018.

**FOR FURTHER INFORMATION CONTACT:** Rachel Greenberg or Kabir Archuletta,

AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0652 or (202) 482–2593, respectively.

**SUPPLEMENTARY INFORMATION:**

**Scope of the Order**

The product covered by this review is CORE from India. For a full description of the scope, see the Issues and Decision Memorandum dated concurrently with and hereby adopted by this notice.<sup>1</sup>

**Analysis of Comments Received**

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the Issues and Decision Memorandum.<sup>2</sup> A list of the issues that parties raised and to which we responded is attached to this notice as an Appendix. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov> and in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at <http://enforcement>.

[trade.gov/frn/index.html](https://trade.gov/frn/index.html). The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

**Changes Since the Preliminary Results**

Based on a review of the record and comments received from interested parties, we have recalculated JSW Steel Ltd. and JSW Coated Products Limited (collectively, JSW) weighted-average dumping margin to (1) use the correct program language for weight averaging the manufacturer-specific cost data; (2) use modified program language so as to not make an export subsidy adjustment to sales after the expiration of the provisional measures period in the companion countervailing duty investigation and before the publication of the ITC’s final injury determination during the underlying investigation of this proceeding (*i.e.*, March 5, 2016, through July 20, 2016);<sup>3</sup> and (3) use the most recently completed proceeding (*i.e.*, the *CORE CVD Investigation Final*) as the source for the export subsidy adjustment to export price.<sup>4</sup> For further discussion, *see* the Issues and Decision Memorandum.

**Final Results of the Review**

We determine that, for the period of January 4, 2016, through June 30, 2017, the following weighted-average dumping margin exists:

Exporter/producer	Weighted-average dumping margin (percent)
JSW Steel Ltd./JSW Coated Products Limited .....	22.57

**Duty Assessment**

Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review.

In accordance with Commerce’s “automatic assessment” practice, for entries of subject merchandise during the POR produced by JSW for which it did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate those entries at

<sup>1</sup> See Memorandum, “Certain Corrosion-Resistant Steel Products from India: Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review; 2016–2017,” dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

<sup>2</sup> *Id.*

the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

We intend to issue instructions to CBP 15 days after the publication date of the final results of this review.

**Cash Deposit Requirements**

The following cash deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of the subject merchandise

<sup>3</sup> See *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from India: Final Affirmative Determination*, 81 FR 35323, 35324 (June 2, 2016); *see also Certain Corrosion-Resistant Steel Products from China, India, Italy, Korea, and Taiwan; Determinations*, 81 FR 47177 (July 20, 2016).

entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for JSW will be the rate established in the final results of this administrative review; (2) for merchandise exported by producers or exporters not covered in this administrative review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the

<sup>4</sup> See *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from India: Final Affirmation Determination*, 81 FR 35323 (June 2, 2016) (*CORE CVD Investigation Final*) and accompanying Issues and Decision Memorandum at 11.



company-specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the subject merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 0.00 percent, the all-others rate established in the investigation.<sup>5</sup> These cash deposit requirements, when imposed, shall remain in effect until further notice.

#### Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of doubled antidumping duties.

#### Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(h).

Dated: December 10, 2018.

**Gary Taverman,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.*

#### Appendix

##### List of Topics Discussed in the Final Decision Memorandum

- I. Summary
- II. List of Comments
- III. Background
- IV. Changes Since the Preliminary Results
- V. Scope of the Order
- VI. Discussion of Comments
  - Comment: Errors in Home Market SAS Programming Language
- VII. Recommendation

[FR Doc. 2018–27122 Filed 12–13–18; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A–588–869]

#### Diffusion-Annealed, Nickel-Plated, Flat-Rolled Steel Products From Japan: Final Results of Antidumping Duty Administrative Review; 2016–2017

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Commerce) find that diffusion-annealed, nickel-plated, flat-rolled steel products from Japan have been sold at less than normal value during the period of review (POR) May 1, 2016, through April 30, 2017.

**DATES:** Applicable December 14, 2018.

**FOR FURTHER INFORMATION CONTACT:** Edythe Artman, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3931.

#### SUPPLEMENTARY INFORMATION:

##### Background

On June 11, 2018, Commerce published the *Preliminary Results*.<sup>1</sup> A summary of the events that occurred since Commerce published these results, as well as a full discussion of the issues raised by parties for these final results, may be found in the Issues

and Decision Memorandum, which is hereby adopted by this notice.<sup>2</sup>

#### Scope of the Order

The diffusion-annealed, nickel-plated flat-rolled steel products included in this order are flat-rolled, cold-reduced steel products, regardless of chemistry; whether or not in coils; either plated or coated with nickel or nickel-based alloys and subsequently annealed (*i.e.*, “diffusion-annealed”); whether or not painted, varnished or coated with plastics or other metallic or nonmetallic substances; and less than or equal to 2.0 mm in nominal thickness. For purposes of this order, “nickel-based alloys” include all nickel alloys with other metals in which nickel accounts for at least 80 percent of the alloy by volume.

Imports of merchandise included in the scope of this order are classified primarily under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7212.50.0000 and 7210.90.6000, but may also be classified under HTSUS subheadings 7210.70.6090, 7212.40.1000, 7212.40.5000, 7219.90.0020, 7219.90.0025, 7219.90.0060, 7219.90.0080, 7220.90.0010, 7220.90.0015, 7225.99.0090, or 7226.99.0180. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

#### Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the Issues and Decision Memorandum. A list of the issues raised by parties is attached to this notice as an Appendix. The Issues and Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov> and it is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/index.html>. The signed and electronic versions of

<sup>5</sup> See *Certain Corrosion-Resistant Steel Products from India, Italy, the People's Republic of Korea and Taiwan: Amended Final Affirmative Antidumping Determination for India and Taiwan, and Antidumping Duty Orders*, 81 FR 48390, 48393 (July 25, 2016).

<sup>1</sup> See *Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan: Preliminary Results of Antidumping Duty Administrative Review; 2016–2017*, 83 FR 26955 (June 11, 2018) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum.

<sup>2</sup> See Memorandum, “Issues and Decision Memorandum for the Final Results of the Administrative Review of the Antidumping Duty Order on Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan; 2016–2017,” dated concurrently with and hereby adopted by this notice (Issues and Decision Memorandum).



the Issues and Decision Memorandum are identical in content.

With regard to NSSMC, we received no comments or submissions since the *Preliminary Results*. Therefore, we continue to find that, in accordance with sections 776(a) and (b) of the Act, application of facts otherwise available, with an adverse inference, is warranted.<sup>3</sup>

**Changes Since the Preliminary Results**

Based on our review of the record and comments received from interested parties, we made certain changes to the margin calculations for Toyo Kohan. Commerce has relied on partial facts available under section 776(a) and (b) of the Act. In addition, Commerce finds that Toyo Kohan failed to cooperate to the best of its ability and thus it is

applying adverse inferences in selecting from facts available, pursuant to section 776(b). For a discussion of these changes, *see* Issues and Decision Memorandum.

**Final Results of the Review**

The final dumping margins are as follows for the period May 1, 2016, through April 30, 2017:

Producer or exporter	Dumping margin (percent)
Toyo Kohan Co., Ltd .....	4.57
Nippon Steel & Sumitomo Metal Corporation .....	77.70

**Disclosure**

We will disclose the calculations performed to parties in this proceeding within five days of the date of publication of this notice, in accordance with 19 CFR 351.224(b).

**Assessment Rates**

Commerce shall determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(1).

For Toyo Kohan, because its weighted-average dumping margin is not zero or *de minimis* (i.e., less than 0.5 percent), Commerce has calculated an importer-specific *ad valorem* duty assessment rate. We calculated importer-specific *ad valorem* antidumping duty rates by aggregating the total amount of dumping calculated for the importer’s examined sales and dividing each of these amounts by the total entered value associated with those sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review where an importer-specific assessment is above *de minimis*. Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the importer-specific assessment rate is zero or *de minimis*.

For NSSMC, we will base the assessment rate for the corresponding entries on the margin listed above.

**Cash Deposit Requirements**

The following cash deposit requirements will be effective upon publication of this notice for all shipments of subject merchandise entered, or withdrawn from warehouse,

for consumption on or after the publication of these final results, as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for Toyo Kohan and NSSMC will be the rate established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this administrative review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the manufacturer of the subject merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 45.42 percent, the all-others rate established in the antidumping investigation.<sup>4</sup> These cash deposit requirements, when imposed, shall remain in effect until further notice.

**Notification to Importers**

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the period of review. Failure to comply with this requirement could result in Commerce’s presumption that reimbursement of antidumping duties did occur and the subsequent assessment of doubled antidumping duties.

**Administrative Protective Order**

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(h).

Dated: December 7, 2018.  
**Christian Marsh,**  
*Deputy Assistant Secretary for Enforcement and Compliance.*

**Appendix**

- List of Topics Discussed in the Issues and Decision Memorandum**
- I. Summary
  - II. List of Issues
  - III. Background
  - IV. Scope of the Order
  - V. Application of Partial Facts Available and Use of Adverse Inference
  - VI. Discussion of the Issues
    - Comment 1: Failure to Report Actual Production Dates
    - Comment 2 Failure to Report Actual Home Market Payment Dates
    - Comment 3: Reconciliation of U.S. Sales at Verification
    - Comment 4: Rejection of Toyo Kohan’s Factual Information to Rebut the Verification Report

<sup>3</sup> For a full discussion of Commerce’s determination to apply adverse fact available pursuant to sections 776(a) and (b) of the Act, *see*

*Preliminary Results* at 26956 and accompanying Preliminary Decision Memorandum at 3–5.  
<sup>4</sup> *See Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan: Antidumping*

*Duty Order*, 79 FR 30816, 30817 (May 29, 2014) (Order).

Comment 5: Use of Revised Data in the Final Results of Review  
 Comment 6: Failure to Report End-User Customer Codes  
 VII. Recommendation

[FR Doc. 2018-27120 Filed 12-13-18; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-475-819]

#### Pasta From Italy: Final Results of Countervailing Duty Administrative Review; 2016

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Commerce) has completed its administrative review of the countervailing duty (CVD) order on pasta from Italy. We have determined that GR.A.M.M. S.r.l. (GR.A.M.M.), the only mandatory respondent, received countervailable subsidies during the period of review (POR) January 1, 2016, through December 31, 2016.

**DATES:** Applicable December 14, 2018.

**FOR FURTHER INFORMATION CONTACT:** Mary Kolberg, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-1785.

#### SUPPLEMENTARY INFORMATION:

##### Background

On July 24, 1996, Commerce published in the **Federal Register** a CVD Order on pasta from Italy.<sup>1</sup> On August 9, 2018, Commerce published the *Preliminary Results* of this CVD administrative review in the **Federal Register**.<sup>2</sup> Commerce gave interested parties an opportunity to comment on the *Preliminary Results*. On September 11, 2018, we received a case brief from GR.A.M.M. No rebuttal comments were received.

##### Scope of the Order

The merchandise covered by this order is certain non-egg dry pasta from Italy. The merchandise subject to this order is currently classifiable under

items 1901.90.90.95 and 1902.19.20 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive. A full description of the scope of the order is contained in the Issues and Decision Memorandum, which is hereby adopted in this notice.<sup>3</sup>

#### Analysis of Comments Received

All issues raised in the respondent's case brief are listed in the Appendix to this notice and are addressed in the Issues and Decision Memorandum accompanying this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov> and in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn>. The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

#### Changes Since the Preliminary Results

For the final results, we changed the calculation of the countervailable subsidy rate for Action 6.1.4, Aid on Investment Program Promoted by Micro and Small Businesses, based on additional information provided regarding the specificity of the program and no longer find the portion of the program funded by the Regional Government of Puglia to be countervailable.

#### Methodology

We conducted this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found to be countervailable during the POR, we find that there is a subsidy, *i.e.*, a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific.<sup>4</sup> For a full description of the methodology underlying our

conclusions, *see* the Issues and Decision Memorandum.

#### Final Results of Review

We determine the following net countervailable subsidy rate for GR.A.M.M., for the period, January 1, 2016, through December 31, 2016:

Producer/exporter	Net subsidy rate (percent)
GR.A.M.M. S.r.l. ....	1.18

#### Disclosure

We intend to disclose to the parties in this proceeding the calculations performed for these final results within five days of the date of publication of this notice in the **Federal Register**.<sup>5</sup>

#### Assessment Rates

In accordance with 19 CFR 351.212(b)(2), Commerce intends to issue assessment instructions to U.S. Customs and Border Protection (CBP) 15 days after the date of publication of these final results to liquidate shipments of subject merchandise entered, or withdrawn from warehouse, for consumption, on or after January 1, 2016 through December 31, 2016, at the *ad valorem* rate listed above.

#### Cash Deposit Instructions

In accordance with section 751(a)(2)(C) of the Act, we intend to instruct CBP to collect cash deposits of estimated countervailing duties in the amount shown above for shipments of subject merchandise by GR.A.M.M.. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company. These cash deposit requirements, when imposed, shall remain in effect until further notice.

#### Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

We are issuing and publishing these results in accordance with sections

<sup>1</sup> See Notice of Countervailing Duty Order and Amended Final Affirmative Countervailing Duty Determination: Certain Pasta ("Pasta") from Italy, 61 FR 38544 (July 24, 1996) (Order).

<sup>2</sup> See *Certain Pasta from Italy: Preliminary Results of Countervailing Duty Administrative Review and Partial Rescission*; 2016, 83 FR 39418 (August 9, 2018) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

<sup>3</sup> See Memorandum, "Issues and Decision Memorandum for the Final Results of Countervailing Duty Administrative Review: Certain Pasta from Italy; 2016," dated concurrently with this notice (Issues and Decision Memorandum).

<sup>4</sup> See sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and, section 771(5A) of the Act regarding specificity.

<sup>5</sup> See 19 CFR 351.224(b).

751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(5).

Dated: December 7, 2018.

**Gary Taverman,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.*

**Appendix**

**List of Topics Discussed in the Issues and Decision Memorandum**

- I. Summary
- II. Background
- III. List of Interested Party Comments
- IV. Scope of the Order
- V. Changes Since the Preliminary Results
- VI. Subsidy Valuation Information
- VII. Analysis of Programs
- VIII. Discussion of the Issues
  - Comment 1: Commerce Should Not Make Any Changes to the Results Other Than Those Raised in Parties' Briefs
  - Comment 2: Commerce Should Exclude the Action 6.1.4. Program from the Final Results
  - Commerce 3: Commerce Should Recalculate the Benefit for the ERDF Action 4.1 Program
- IX. Conclusion

[FR Doc. 2018–27119 Filed 12–13–18; 8:45 am]

**BILLING CODE 3510–DS–P**

**DEPARTMENT OF COMMERCE**

**International Trade Administration**

[A–570–905]

**Certain Polyester Staple Fiber From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Results of Antidumping Duty Administrative Review and Notice of Amended Final Results of Antidumping Duty Administrative Review**

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** On November 30, 2018, the United States Court of International Trade (CIT or the Court) sustained the final results of redetermination pertaining to the antidumping duty (AD) administrative review of certain polyester staple fiber (PSF) from the People's Republic of China (China) for the period of review (POR) June 1, 2010, through May 31, 2011. The Department of Commerce (Commerce) is notifying the public that the final judgment in this case is not in harmony with the final results of the AD administrative review of the antidumping duty order on PSF from China and that Commerce is amending the final results with respect to the AD cash deposit rate assigned to

Zhaoqing Tifo New Fibre Co., Ltd (Zhaoqing Tifo).

**DATES:** Applicable December 10, 2018.

**FOR FURTHER INFORMATION CONTACT:** Jerry Huang, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–4047.

**SUPPLEMENTARY INFORMATION:**

**Background**

On January 11, 2013, Commerce published its *Final Results* of the 2010–2011 AD administrative review of PSF from China.<sup>1</sup> On April 7, 2015, the CIT remanded the *Final Results* to Commerce to reconsider the dumping margin calculation for Zhaoqing Tifo and to consider any potential for double counting of energy inputs by the inclusion of coal as a factor of production (FOP), as alleged by Zhaoqing Tifo.<sup>2</sup> In its First Remand Redetermination, Commerce relied upon a different set of financial statements that allowed Commerce to more accurately calculate Zhaoqing Tifo's dumping margin while also addressing any concerns of double counting of energy inputs.<sup>3</sup> On August 30, 2017, the Court remanded this issue to Commerce a second time, finding that Commerce's selection of financial statements was not timely challenged by any party and was, thus, beyond the scope of the remand in *Zhaoqing Tifo I*.<sup>4</sup> Therefore, the Court instructed Commerce to reconsider how the surrogate financial ratios originally used in *Final Results* account for energy sources and whether the inclusion of coal in the FOP database results in double-counting.<sup>5</sup> In its Second Remand Redetermination, under respectful protest,<sup>6</sup> Commerce relied on the financial statements used in the *Final Results*,<sup>7</sup> and removed coal as a factor of

<sup>1</sup> See *Certain Polyester Staple Fiber from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010–2011*, 78 FR 2366 (January 11, 2013) (*Final Results*) and accompanying Issues and Decision Memorandum (IDM).

<sup>2</sup> See *Zhaoqing Tifo New Fibre Co., Ltd. v. United States*, 60 F. Supp. 3d 1328 (CIT 2015) (*Zhaoqing Tifo I*).

<sup>3</sup> See *Final Results of Redetermination Pursuant to Zhaoqing Tifo New Fibre Co., Ltd. v. United States*, Court No. 13–00044, Slip Op. 15–31 (April 9, 2015), dated July 9, 2015 (First Remand Redetermination).

<sup>4</sup> See *Zhaoqing Tifo New Fibre Co., Ltd. v. United States*, 256 F. Supp. 3d 1314, 1334 (CIT 2017) (*Zhaoqing II*).

<sup>5</sup> *Id.*, 256 F. Supp. 3d at 1337.

<sup>6</sup> See *Viraj Grp. Ltd. v. United States*, 343 F.3d 1371, 1376 (Fed. Cir. 2003).

<sup>7</sup> *Final Results*, 78 FR at 2368, and accompanying IDM at Comment 2.

production from the dumping margin calculation to address the Court's concern over potential double counting of energy inputs.<sup>8</sup> On November 30, 2018, the CIT sustained Commerce's Second Remand Redetermination.<sup>9</sup>

**Timken Notice**

In its decision in *Timken*,<sup>10</sup> as clarified by *Diamond Sawblades*,<sup>11</sup> the Court of Appeals for the Federal Circuit (CAFC) held that, pursuant to section 516A 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 a Commerce determination and must suspend liquidation of entries pending a “conclusive” court decision.<sup>12</sup> The CIT's November 30, 2018, final judgment affirming the Second Remand Redetermination constitutes a final decision of the Court that is not in harmony with Commerce's *Final Results*. This notice is published in fulfillment of the publication requirements of *Timken* and section 516A of the Act.

**Amended Final Results**

Because there is now a final court decision, Commerce is amending its *Final Results*. Commerce finds that the revised AD dumping margin for Zhaoqing Tifo is as follows:

Producer/exporter	Weighted-average dumping margin (percent)
Zhaoqing Tifo New Fiber Co., Ltd .....	0.00

Accordingly, Commerce will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision. In the event the Court's ruling is not appealed or, if appealed, upheld by the CAFC, Commerce will instruct U.S. Customs and Border Protection to assess antidumping duties on unliquidated entries of subject merchandise exported

<sup>8</sup> See *Final Results of Redetermination Pursuant to Court Remand Zhaoqing Tifo New Fibre Co., Ltd. v. United States*, Court No. 13–00044, Slip Op. 17–118 (CIT August 30, 2017), dated November 6, 2017 (Second Remand Redetermination).

<sup>9</sup> See *Zhaoqing Tifo New Fibre Co., Ltd. v. United States*, Court No. 13–00044, Slip Op. 18–168 (CIT November 30, 2018).

<sup>10</sup> See *Timken Co., v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

<sup>11</sup> See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

<sup>12</sup> See Sections 516A(c) and (e) of the Act.

by Zhaoqing Tifo using the assessment rate calculated by Commerce listed above.

#### Cash Deposit Requirements

Because cash deposit rate for Zhaoqing Tifo has been superseded by cash deposit rates calculated in intervening administrative reviews of the AD order on PSF from China, we will not alter the cash deposit rate for Zhaoqing Tifo.

#### Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(e), 751(a)(1), and 777(i)(1) of the Act.

Dated: December 10, 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. 2018-27121 Filed 12-13-18; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-900]

#### Diamond Sawblades and Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2016-2017

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Commerce) finds that certain companies covered by this administrative review made sales of diamond sawblades and parts thereof (diamond sawblades) from the People's Republic of China (China) at less than normal value during the period of review (POR) November 1, 2016, through October 31, 2017.

**DATES:** Applicable December 14, 2018.

**FOR FURTHER INFORMATION CONTACT:** Yang Jin Chun or Joshua Poole, AD/CVD

Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-5760 and (202) 482-1293, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

On August 10, 2018, Commerce published the preliminary results of the administrative review of the antidumping duty order on diamond sawblades from China covering the period of review (POR) November 1, 2016, through October 31, 2017.<sup>1</sup> We received case and rebuttal briefs with respect to the *Preliminary Results*. The deadline for the final results of this review is December 10, 2018.<sup>2</sup> We conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

##### Scope of the Order

The merchandise subject to the order is diamond sawblades. The diamond sawblades subject to the order are currently classifiable under subheadings 8202 to 8206 of the Harmonized Tariff Schedule of the United States (HTSUS) and may also enter under subheading 6804.21.00. The HTSUS subheadings are provided for convenience and customs purposes. A full description of the scope of the order is contained in the Issues and Decision Memorandum.<sup>3</sup> The written description is dispositive.

##### Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the Issues and Decision Memorandum. A list of the issues raised is attached to this notice as an appendix. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov> and to all parties in the

Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Enforcement and Compliance website at <http://enforcement.trade.gov/frn/index.html>.

#### Final Determination of No Shipments

We preliminarily found that Danyang Hantronic Import & Export Co., Ltd., Danyang Tsunda Diamond Tools Co., Ltd., Jiangsu Huachang Tools Manufacturing Co., Ltd., Shanghai Starcraft Tools Company Limited, Weihai Xiangguang Mechanical Industrial Co., Ltd., and Wuhan Wanbang Laser Diamond Tools Co., Ltd., which have been eligible for separate rates in previous segments of the proceeding and are subject to this review, did not have any reviewable entries of subject merchandise during the POR.<sup>4</sup> After the *Preliminary Results*, we received no comments or additional information with respect to these six companies. Therefore, for the final results, we continue to find that these six companies did not have any reviewable entries of subject merchandise during the POR. Consistent with our practice, we will issue appropriate instructions to U.S. Customs and Border Protection (CBP) based on our final results.

#### Separate Rates

Commerce preliminarily determined that 14 respondents are eligible to receive separate rates in this review.<sup>5</sup> We made no changes to these determinations for the final results.

#### Changes Since the Preliminary Results

We made no revisions to the *Preliminary Results*.

#### Final Results of the Review

As a result of this administrative review, we determine that the following weighted-average dumping margins exist for the period November 1, 2016, through October 31, 2017:

Company	Margin (percent)
Chengdu Huifeng New Material Technology Co., Ltd <sup>6</sup> .....	82.05
Danyang Weiwang Tools Manufacturing Co., Ltd .....	82.05

<sup>1</sup> See *Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 39673 (August 10, 2018) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

<sup>2</sup> See *Notice of Clarification: Application of "Next Business Day" Rule for Administrative*

*Determination Deadlines Pursuant to the Tariff Act of 1930, as Amended*, 70 FR 24533 (May 10, 2005). The statutory deadline for the final results of this review is Saturday, December 8, 2018.

<sup>3</sup> See the Memorandum, "Issues and Decision Memorandum for the Administrative Review of the Antidumping Duty Order on Diamond Sawblades and Parts Thereof from the People's Republic of

China," (Issues and Decision Memorandum) dated concurrently with and hereby adopted by this notice at 2-3.

<sup>4</sup> See *Preliminary Results*, 83 FR at 39673, n.2, and accompanying Preliminary Decision Memorandum at 3.

<sup>5</sup> *Id.* at 39673, n.6, and accompanying Preliminary Decision Memorandum at 4-8.

Company	Margin (percent)
Guilin Tebon Superhard Material Co., Ltd .....	82.05
Hangzhou Deer King Industrial and Trading Co., Ltd .....	82.05
Henan Huanghe Whirlwind International Co., Ltd .....	82.05
Huzhou Gu's Import & Export Co., Ltd .....	82.05
Jiangsu Fengtai Single Entity <sup>7</sup> .....	82.05
Jiangsu Inter-China Group Corporation .....	82.05
Quanzhou Zhongzhi Diamond Tool Co., Ltd .....	82.05
Rizhao Hein Saw Co., Ltd .....	82.05
Saint-Gobain Abrasives (Shanghai) Co., Ltd .....	82.05
Shanghai Jingquan Industrial Trade Co., Ltd .....	82.05
Xiamen ZL Diamond Technology Co., Ltd .....	82.05
Zhejiang Wanli Tools Group Co., Ltd .....	82.05

## Assessment

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b), Commerce shall determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.<sup>8</sup> For all respondents eligible for a separate rate, we will instruct CBP to apply an antidumping duty assessment rate of 82.05 percent to all entries of subject merchandise that entered the United States during the POR.<sup>9</sup> For all other companies, we will instruct CBP to apply the antidumping duty assessment rate of the China-wide entity, 82.05 percent, to all entries of subject merchandise exported by these companies.<sup>10</sup> For the six companies that we determined had no reviewable entries of the subject merchandise in this review period, any suspended entries that entered under that exporter's case number (*i.e.*, at that exporter's rate) will be liquidated at the China-wide rate. We intend to issue assessment instructions to CBP 15 days after the date of publication of the final results of review.

## Cash Deposit Requirements

The following cash deposit requirements will be effective upon

publication of the final results of this administrative review for all shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date as provided by section 751(a)(2)(C) of the Act: (1) For subject merchandise exported by the companies listed above that have separate rates, the cash deposit rate will be the rate established in these final results of review for each exporter as listed above; (2) for previously investigated or reviewed Chinese and non-Chinese exporters not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the exporter-specific rate; (3) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be that for the China-wide entity; (4) for all non-Chinese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-Chinese exporter. These deposit requirements shall remain in effect until further notice.

## Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

## Administrative Protective Orders

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in

accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation subject to sanction.

These final results of review are issued and published in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: December 10, 2018.

**Gary Taverman,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.*

## Appendix

### List of Topics Discussed in the Final Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Discussion of the Issues
  - Comment 1: Rate for Non-Selected Separate Rate Respondents
  - Comment 2: Respondent Identification in Liquidation Instructions
- V. Recommendation

[FR Doc. 2018–27123 Filed 12–13–18; 8:45 am]

BILLING CODE 3510–DS–P

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Additions and Deletions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Additions to and deletions from the Procurement List.

**SUMMARY:** This action adds products to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes products and services from the

<sup>6</sup> See *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Changed Circumstances Review*, 82 FR 60177 (December 19, 2017). In this changed circumstances review, Commerce determined that Chengdu Huifeng New Material Technology Co., Ltd. is the successor-in-interest to Chengdu Huifeng Diamond Tools Co., Ltd.

<sup>7</sup> Jiangsu Fengtai Diamond Tool Manufacture Co., Ltd., Jiangsu Fengtai Tools Co., Ltd., and Jiangsu Fengtai Sawing Industry Co., Ltd., comprise the Jiangsu Fengtai Single Entity. See *Preliminary Results and accompanying Preliminary Decision Memorandum* at 6, n.32.

<sup>8</sup> See 19 CFR 351.212(b)(1).

<sup>9</sup> See Issues and Decision Memorandum at Comment 1.

<sup>10</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 1329 (January 11, 2018) ("All firms listed below that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate rate application or certification, as described below.").

Procurement List previously furnished by such agencies.

**DATES:** Date added to and deleted from the Procurement List: January 13, 2019.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia, 22202-4149.

**FOR FURTHER INFORMATION CONTACT:** Michael R. Jurkowski, Telephone: (703) 603-2117, Fax: (703) 603-0655, or email CMTEFedReg@AbilityOne.gov.

**SUPPLEMENTARY INFORMATION:**

**Additions**

On 11/2/2018 (83 FR 213), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and impact of the additions on the current or most recent contractors, the Committee has determined that the products listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501-8506 and 41 CFR 51-2.4.

*Regulatory Flexibility Act Certification*

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products to the Government.

2. The action will result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501-8506) in connection with the products proposed for addition to the Procurement List.

*End of Certification*

Accordingly, the following products are added to the Procurement List:

*Product(s)*

**NSN(s)—Product Name(s):** MR 8000-9999—Power Panel Program, MR Series 8000-9999

**Mandatory Source of Supply:** Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC

**Contracting Activity:** Defense Commissary Agency

**Mandatory for:** The requirements of military commissaries and exchanges in accordance with the Code of Federal Regulations 41 CFR 51-6.4.

*Distribution:* C-List

**Deletions**

On 11/2/2018 (83 FR 213) and 11/9/2018 (83 FR 218), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501-8506 and 41 CFR 51-2.4.

*Regulatory Flexibility Act Certification*

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501-8506) in connection with the products and services deleted from the Procurement List.

*End of Certification*

Accordingly, the following products and services are deleted from the Procurement List:

*Products*

**NSN(s)—Product Names:** 8465-01-141-2321—Pack, Personal Gear, Forest Service

**Mandatory Source of Supply:** Helena Industries, Inc., Helena, MT

**Contracting Activity:** DLA Troop Support, Philadelphia, PA

**NSNs—Product Names:**

6645-01-623-8819—Clock, Wall, Quartz, Mahogany, 15.5" Diameter

6645-01-623-8820—Clock, Wall, Self-Set, Mahogany, 15.5" Diameter

6645-01-623-8821—Clock, Wall, Quartz, Custom Logo, Mahogany, 15.5" Diameter

6645-01-623-8822—Clock, Wall, Self-Set, Custom Logo, Mahogany, 15.5" Diameter

6645-01-557-3159—Clock, Wall, Self-Set, Bronze, 8" Diameter

6645-01-557-8132—Clock, Wall, Self-Set, Custom Logo, Bronze, 8" Diameter

**Mandatory Source of Supply:** Chicago

**Lighthouse Industries, Chicago, IL**

**Contracting activity:** GSA/FAS Admin. Svcs. Acquisition BR (2, New York, NY)

**NSNs—Product Name(s):**

MR 440—Candle, Soy, Vanilla Cupcake Scented, 8.5 oz

MR 441—Candle, Soy, Berry Fusion

Scented, 8.5 oz

MR 442—Candle, Soy, Cinnamon Apple

Scented, 8.5 oz

MR 444—Candle, Soy, Macintosh Apple

Scented, 8.5 oz

MR 446—Candle, Soy, Caribbean Breezes

Scented, 8.5 oz

MR 357—Tumblers, Red, White and Blue,

Includes Shipper 10357

**Mandatory Source of Supply:** Industries for the Blind and Visually Impaired, Inc., West Allis, WI

**Contracting Activity:** Defense Commissary Agency

*Services*

**Service Type:** Janitorial/Custodial Service

**Mandatory for:** U.S. Army Reserve Center: 1750 East 29th Street, Tucson, AZ

**Mandatory Source of Supply:** Catholic Community Services of Southern Arizona, Tucson, AZ

**Contracting Activity:** Dept. of the Army, W40M Northregion Contract OFC

**Service Type:** Grounds Maintenance Service

**Mandatory for:** Naval Support Activity, 2300 General Meyers Avenue, Algiers, LA

**Mandatory Source of Supply:** Goodworks, Inc., New Orleans, LA

**Contracting Activity:** Dept. of the Navy, NAVFAC Southeast

**Service Type:** Janitorial/Custodial Service

**Mandatory for:** Navy Aviation Supply Office: Buildings 3A, 3B, 3C, 3D, 4A, 5A, 5B, 36/1, 36/2, 36/3, and 11 Trailers, Philadelphia, PA

**Mandatory Source of Supply:** The Chimes, Inc., Baltimore, MD

**Contracting Activity:** Dept. of the Navy, U.S. Fleet Forces Command

**Service Type:** Facilities Maintenance Service

**Mandatory for:** Mississippi Air National Guard: ANG CRTCLG, 4715 Hewes Avenue, Building 1, Gulfport, MS

**Mandatory Source of Supply:** Mississippi Goodworks, Inc., Gulfport, MS

**Contracting Activity:** Dept. of Defense, DOD/OFF of Secretary of DEF. (EXC. MIL. DEPTS.)

**Service Type:** Janitorial/Custodial Service

**Mandatory for:** New Orleans Naval Support Activity: (basewide except Commissary & Exchange facilities), New Orleans, LA

**Mandatory Source of Supply:** Goodworks, Inc., New Orleans, LA

**Contracting Activity:** Dept. of the Navy, NAVFAC Southeast

**Service Type:** Grounds Maintenance Service

**Mandatory for:** Fort Ord, Fort Ord, CA

**Mandatory Source of Supply:** Unknown

**Contracting Activity:** Dept. of the Army, W40M Northregion Contract OFC

**Service Type:** Janitorial/Custodial Service

**Mandatory for:** U.S. Army Reserve Center: 500 W 24th Street, Chester, PA

**Mandatory Source of Supply:** The Chimes, Inc., Baltimore, MD

**Contracting Activity:** Dept. of the Army,

W40M Northregion Contract OFC

**Michael R. Jurkowski,**

*Deputy Director, Business & PL Operations,  
Business Operations.*

[FR Doc. 2018–27147 Filed 12–13–18; 8:45 am]

**BILLING CODE 6353–01–P**

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Proposed Addition and Deletions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Proposed addition to and deletions from the Procurement List.

**SUMMARY:** The Committee is proposing to add a service to the Procurement List that will be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities, and deletes products and services previously furnished by such agencies.

**DATES:** Comments must be received on or before: January 13, 2019.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia 22202–4149.

**FOR FURTHER INFORMATION CONTACT:** For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email [CMTEFedReg@AbilityOne.gov](mailto:CMTEFedReg@AbilityOne.gov).

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

### Addition

If the Committee approves the proposed addition, the entities of the Federal Government identified in this notice will be required to procure the service listed below from a nonprofit agency employing persons who are blind or have other severe disabilities.

The following service is proposed for addition to the Procurement List for production by the nonprofit agency listed:

#### Service

**Service Type:** Mailroom Operation Service  
**Mandatory for:** U.S. Air Force, Official Mail Center, Cannon AFB 502 S Aderholt Loop, Cannon AFB, NM

**Mandatory Source of Supply:** ENMRSH, Inc., Clovis, NM

**Contracting Activity:** Dept of the Air Force, FA4855 27 SOCONS LGC

### Deletions

The following products and services are proposed for deletion from the Procurement List:

#### Products

**NSN(s)—Product Name(s):** 7510–01–600–8037—Dated 2018 12-Month 2-Sided Laminated Wall Planner, 24" x 37"

**Mandatory Source of Supply:** Chicago

Lighthouse Industries, Chicago, IL

**Contracting Activity:** GSA/FAS Furniture Systems Mgt. Div., Philadelphia, PA

**NSN(s)—Product Name(s):** 8305–00–205–3558—Cheesecloth, Remnants, White, 50 lbs

**Mandatory Source of Supply:** Lions Services, Inc., Charlotte, NC

**Contracting Activity:** GSA/FSS Greater Southwest Acquisiti, Fort Worth, TX

#### Services

**Service Type:** Janitorial/Custodial Service  
**Mandatory for:**

U.S. Federal Building: 600 Broad Street, Gadsden, AL

Social Security Administration Building 201 College Street, Gadsden, AL

U.S. Federal Building and Courthouse: Maine and Watson, Centre, AL

**Mandatory Source of Supply:** Alabama Goodwill Industries, Inc., Birmingham, AL

**Contracting Activity:** Public Buildings Service, Acquisition Division/Services Branch

**Service Type:** Document Destruction Service

**Mandatory for:** USDA, APHIS, 100 North Sixth Street, Butler Square, Minneapolis, MN

**Mandatory Source of Supply:** AccessAbility, Inc., Minneapolis, MN

**Contracting Activity:** Animal and Plant Health Inspection Service, USDA APHIS MRPBS

**Service Type:** Janitorial/Custodial Service

**Mandatory for:** U.S. Army Reserve Center: 1101 W Central Avenue, Bldgs 104–109, 140, 141, 144 and 145, Arlington Heights, IL

**Mandatory Source of Supply:** Clearbrook Center, Inc., Arlington Heights, IL

**Contracting Activity:** Dept. of the Army, W6QM MICC FT MCCOY (RC)

**Service Type:** Janitorial/Custodial Service

**Mandatory for:** Norfolk Naval Base: Navy Commissary Stores, Norfolk, VA

**Mandatory Source of Supply:** PRIDE Industries, Roseville, CA

**Contracting Activity:** Dept. of the Navy, U.S. Fleet Forces Command

**Service Type:** Administrative Service

**Mandatory for:** U.S. Army Medical Command, Health Care Acquisition Activity, Small Business Office, 2199 Storage Street, JBSA Fort Sam Houston, TX

**Mandatory Source of Supply:** Goodwill Industries of San Antonio Contract Services, San Antonio, TX

**Contracting Activity:** Dept. of the Army, W40M USA MEDCOM HCAA

**Service Type:** Janitorial/Custodial Service  
**Mandatory for:** Illinois Air National Guard:

182nd Airlift Wing, 2416 South Falcom Blvd., Peoria, IL

**Mandatory Source of Supply:** Community Workshop and Training Center, Inc., Peoria, IL

**Contracting Activity:** Dept. of the Army, W7M6 USPFO Activity IL ARNG

**Michael R. Jurkowski,**

*Deputy Director, Business & PL Operations,  
Business Operations.*

[FR Doc. 2018–27146 Filed 12–13–18; 8:45 am]

**BILLING CODE 6353–01–P**

## DEPARTMENT OF DEFENSE

### Department of the Army

#### U.S. Army Science 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 U.S. Army Science Board (ASB) will take place.

**DATES:** Tuesday, January 8, 2019: Time: 8:30 a.m. to 9:00 a.m. Wednesday, January 9, 2019: Time: 3:00 p.m. to 4:30 p.m. This meeting will be closed to the public.

**ADDRESSES:** University of Texas System & Army Futures Command Headquarters, 210 West 7th Street, Austin, Texas 78701.

**FOR FURTHER INFORMATION CONTACT:** Ms. Heather J. Gerard (Ierardi), (703) 545–8652 (Voice), 571–256–3383 (Facsimile), [heather.j.ierardi.civ@mail.mil](mailto:heather.j.ierardi.civ@mail.mil) (Email) or Mr. Paul Woodward at (703) 695–8344 or email: [paul.j.woodward2.civ@mail.mil](mailto:paul.j.woodward2.civ@mail.mil). Mailing address is Army Science Board, 2530 Crystal Drive, Suite 7098, Arlington, VA 22202. Website: <https://asb.army.mil/>.

**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 purpose of the meeting is for ASB members to review, deliberate, and vote on the findings and recommendations presented for two Fiscal Year 2019 ASB Studies.

**Agenda:** The ASB will present findings and recommendations for deliberation and vote on the following studies: Manned Unmanned Teaming. This study is classified and will be discussed from 8:30 a.m. to 9:00 a.m. on



January 8, 2019; Independent Assessment of the Army's Science and Technology Portfolio Realignment. This study is classified and will be discussed from 3:00 p.m. to 4:30 p.m. on January 9, 2019.

**Meeting Accessibility:** Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102-3.155, the Department of the Army has determined that the meeting shall be closed to the public. Specifically, consistent with 5 U.S.C. 552b(c)(1), the Administrative Assistant to the Secretary of the Army, in consultation with the Office of the Army General Counsel, has determined in writing that the public interest requires that all sessions of the committee's meeting will be closed to the public because the meetings are likely to disclose matters that are (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) in fact properly classified pursuant to such Executive order.

**Written Statements:** Pursuant to 41 CFR 102-3.105(j) and 102-3.140, and § 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements to the ASB about its mission and functions. Written statements may be submitted at any time or in response to the stated agenda of a planned meeting of the ASB. All written statements must be submitted to the Designated Federal Officer (DFO) at the address listed above, and this individual will ensure that the written statements are provided to the membership for their consideration. Written statements not received at least 10 calendar days prior to the meeting may not be considered by the ASB prior to its scheduled meeting. After reviewing written comments, the DFO may choose to invite the submitter of the comments to orally present their issue during a future open meeting.

**Brenda S. Bowen,**

*Army Federal Register Liaison Officer.*

[FR Doc. 2018-27108 Filed 12-13-18; 8:45 am]

**BILLING CODE 5001-03-P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

[Docket ID: DOD-2018-HA-0099]

### Proposed Collection; Comment Request

**AGENCY:** Office of the Assistant Secretary for Health Affairs, DoD.

**ACTION:** Information collection notice.

**SUMMARY:** In compliance with the *Paperwork Reduction Act of 1995*, the Defense Health Agency announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by February 12, 2019.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

*Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

*Mail:* Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350-1700.

*Instructions:* All submissions received must include the agency name, docket 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.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Defense Health Agency, Office of General Counsel, 61401 E Centretch Parkway, Attn: Bridget Ewings, Aurora, CO 80011, or call Defense Health Agency, Office of General Counsel, at (303) 676-3705.

### SUPPLEMENTARY INFORMATION:

*Title; Associated Form; and OMB Number:* Statement of Personal Injury: Possible Third Party Liability; DD-2527; OMB Control Number 0720-0003.

*Needs and Uses:* When a claim for TRICARE benefits is identified as involving possible third party liability

and the information is not submitted with the claim the TRICARE contractors request that the injured party (or a designee) complete DD Form 2527. To protect the interests of the Government the contractor suspends claims processing until the requested third party liability information is received. The contractor conducts a preliminary evaluation based upon the collection of information and refers the case to a designated appropriate legal officer of the Uniformed Services. The responsible Uniformed Services legal officer uses the information as a basis for asserting and settling the Government's claim. When appropriate the information is forwarded to the Department of Justice as the basis for litigation.

*Affected Public:* Individuals or households.

*Annual Burden Hours:* 47,022.50.

*Number of Respondents:* 188,090.

*Responses per Respondent:* 1.

*Annual Responses:* 188,090.

*Average Burden per Response:* 15 minutes.

*Frequency:* On occasion.

*Dated:* December 11, 2018.

**Morgan E. Park,**

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

[FR Doc. 2018-27102 Filed 12-13-18; 8:45 am]

**BILLING CODE 5001-06-P**

## DEPARTMENT OF DEFENSE

### Department of the Army; Army Corps of Engineers

### Notice of Availability of the Draft Environmental Impact Statement for the Dam Safety Modification Study for the Cherry Creek Project, Arapahoe County, Colorado

**AGENCY:** Department of the Army, U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of availability.

**SUMMARY:** The U.S. Army Corps of Engineers (Corps) has made available for public review and comment the Draft Environmental Impact Statement (Draft EIS) for the Federal action to remediate dam safety concerns at Cherry Creek Dam. The dam safety concerns are primarily related to a hydrologic deficiency resulting from an extreme precipitation event and the large population that could be affected by such an event. Cherry Creek Dam and Lake is located on Cherry Creek, 11.4 miles upstream of its confluence with the South Platte River, in Aurora, Colorado (southeast Denver metropolitan area). The remediation



actions will be identified through a Dam Safety Modification Study being conducted in accordance with Corps policy as described in Engineering Regulation 1110-2-1156 "Safety of Dams—Policy and Procedures."

**DATES:** The public comment period on the Draft EIS begins on December 12, 2018 and will last 45 days. Submit written comments on the Draft EIS on or before January 28, 2019.

**ADDRESSES:** Send written comments, requests to be added to the mailing list, or requests for sign language interpretation for the hearing impaired or other special assistance needs to U.S. Army Corps of Engineers Omaha District, ATTN: CENWO-PMA-C, ATTN: Cherry Creek DSMS, 1616 Capitol Avenue, Omaha, NE 68102-4901; or email to [cenwo-planning@usace.army.mil](mailto:cenwo-planning@usace.army.mil).

**FOR FURTHER INFORMATION CONTACT:** Mr. John Palensky, U.S. Army Corps of Engineers, 1616 Capitol Ave., Omaha, NE 68102, or [john.a.palensky@usace.army.mil](mailto:john.a.palensky@usace.army.mil).

**SUPPLEMENTARY INFORMATION:** The Corps is issuing this notice pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. 4321 *et seq.*; the Council on Environmental Quality's (CEQ) regulations for implementing the procedural provisions of NEPA, 43 CFR parts 1500 through 1508; the Department of the Interior's NEPA regulations, 43 CFR part 46.

The Corps published a Notice of Intent (NOI) to prepare the Draft EIS in the **Federal Register** on December 17, 2013. Public scoping meetings to share information and to allow the public to provide oral or written comments were held near Cherry Creek Dam on January 22, 2015 at the Cherry Creek High School and on January 24, 2015 at the Campus Middle School. Three public scoping meetings were held (September 20, 21 and 22, 2016) in the vicinities of the 3 potential impact areas of the Cherry Creek project, the Cherry Creek Presbyterian Church, Virginia Village Library, and the Aurora Municipal Center. The Corps is planning an additional public on December 12, 2018 at the Lake House at Cherry Creek, Greenwood Village, Colorado to present the Draft EA and seek additional input from the agencies, utility companies and other stakeholders.

**Background Information.** The Cherry Creek Dam and Reservoir Project is located in western Arapahoe County, Colorado southeast of the city of Denver. The project consists of a main dam embankment, outlet works, and an

emergency side-channel spillway. The 14,300-foot-long embankment holds approximately 270,000 acre-feet of water at the top of the dam. Cherry Creek Dam and Reservoir is operated as a system with the Chatfield and Bear Creek projects. Chatfield Dam is located on the South Platte River approximately 15 miles upstream of the South Platte's confluence with Cherry Creek in downtown Denver. Bear Creek Dam is located on Bear Creek, which flows into the South Platte River approximately seven miles upstream of the South Platte's confluence with Cherry Creek. The tri-lakes system is operated to minimize flows at the Denver gauge on the South Platte River in downtown Denver, CO.

The dam was screened in 2005 using the Screening Portfolio Risk Assessment (SPRA). As a result of that analysis, an Issue Evaluation Study (IES) was completed in 2011. The most significant failure mode identified during the IES was overtopping and failure of the embankment during extreme floods. Combined with the extremely high consequences, primarily due to the project location upstream of the Denver metropolitan area, the dam was found to pose an unacceptable risk to the public.

A Dam Safety Modification Study (DSMS) was started in 2013. The purpose of the DSMS is to identify and recommend a risk management plan that reduces risks posed by Cherry Creek Dam. The recommended plan is the No Action Alternative. Federal costs of implementation for this alternative are zero. In some instances, the justification can be made that tolerating structures with high consequences from a failure is in the interest of society. In the case of Cherry Creek Dam, the probability of failure is very low, individual risk is more than two orders of magnitude below the USACE threshold, the risk posed by the project meets the principle of equity as described in ER 1110-2-1156, and the benefits provided by the dam to society justify continued federal investment in this project by the federal government. Risks at the dam are being properly monitored by USACE and state of the practice actions are being taken, including improvements to the USACE warning issuance time and improvements to emergency planning and preparedness by downstream local emergency management agencies.

During the DSMS, the Omaha District initiated a Water Control Plan (WCP) Modification Study in accordance with ER 1110-2-240, Water Control Management and ER 1110-2-1156, Safety of Dams, Policy and Procedures. The purpose of the study was to reduce

the potential risk of failure of Cherry Creek Dam during extreme floods by releasing more water from the outlet works at the dam while limiting exposure to potential downstream damages. The study proposed using a pool elevation trigger. The modification to the WCP was approved in April 2017.

Another factor that reduced overtopping risk in the Future without Action Condition (FWAC) is the restoration of the spillway capacity. The spillway is located on the right side of the embankment and is configured to spill water into the adjacent Sand Creek basin, which flows into the South Platte River in Commerce City north of downtown Denver. Over time soil has accumulated on the bed of the spillway channel resulting in an increase in the spillway crest elevation of approximately 12.5 feet. The spillway crest will be returned back to its design elevation through the maintenance program. A draft Environmental Assessment to evaluate the potential environmental and social effects of the Cherry Creek Spillway Project is currently being prepared under the Operation and Maintenance (O&M) program. Conducting the spillway project under the O&M program will allow the issue to be addressed as a matter of required maintenance as opposed to a dam modification via the Dam Safety program. A contract for the spillway excavation work is planned for 2019 and anticipated to take 12 to 18 months. The costs for returning the spillway to the design configuration are about \$11 million.

The Draft EIS document was produced to look at environmental impacts from implementing potential risk reduction alternatives. While the focus of the DSMS concerns tolerable risk, risk of life loss, etc., the focus of this Draft EIS is not to evaluate impacts of dam failure, but to compare direct, indirect, and cumulative effects of implementing any of the alternatives that address risk.

This notice announces the availability of the Draft EIS and begins a 45-day public comment period on the range of alternatives and effects analysis. Analysis in the Draft EIS will support a decision on the selection of an alternative. The Draft EIS can be accessed at: <http://www.nwo.usace.army.mil/Missions/Civil-Works/Planning/Project-Reports/>. The Corps is serving as the lead Federal agency for the NEPA analysis process and preparation of the Draft EIS. No Cooperating Agencies were established for this study.

**Project Alternatives.** The purpose of the Cherry Creek DSMS is to identify

and recommend a risk management plan that addresses risk of life loss and significant economic, social, and environmental damages associated with a potential failure of Cherry Creek Dam. In addition to the No Action Alternative, Alternatives 2F (raise dam 7.1 feet and spillway to elevation 5610.5 feet from original design of 5599.8 feet NAVD88 to prevent overtopping) and 3B (dam raise of 6.2 feet and no spillway raise) were evaluated in the final array of alternatives.

Dam Raise Alternative 3B consists of the FWAC spillway and a dam raise to contain the PMF. A dam raise height for this alternative is 6.2 feet and the crest width was assumed to be approximately 38 feet to allow reconstruction of the crest road using current road design standards. Various methods for raising the dam were considered, including an earth raise, reinforced concrete wall, and mechanically stabilized earth. The most efficient method of raise depends on several factors including the height of raise, crest width, availability of on-site materials, and steepness of embankment side slopes. Earth/rock fill raises compete well for raises below 4 to 5 feet if the crest width can be minimized. Reinforced Concrete (RC) wall raises are clearly more cost effective for larger raises and when a wide crest is required to allow construction of a crest road that meets modern standards of construction, therefore, the dam would be raised using an RC wall if Alternative 3B is implemented.

Dam Raise Alternative 2F consists of a RC wall dam raise of 7.1 feet and a spillway raise to crest elevation 5610.5 feet NAVD88 to prevent overtopping during the PMF. This spillway crest elevation of 5610.5 feet was chosen to minimize non-breach flows in the spillway impact area. As with Alternative 3B the dam would be raised using an RC wall and the crest width would be approximately 38 feet to allow reconstruction of the crest road using current road design standards.

The Draft EIS evaluates the potential effects on the human environment associated with each of the alternatives. Issues addressed include: Land use and vegetation, social and economic conditions, recreation, water resources, air quality, noise, and environmental justice.

**Schedule.** The public comment period will begin December 12, 2018. Comments on the Draft EIS must be received by January 28, 2019. The Corps will consider and respond to all comments received on the Draft EIS when preparing the Final EIS. The Corps expects to issue the Final EIS in

the summer of 2019, at which time a Notice of Availability will be published in the **Federal Register**.

The public meeting date or location may change based on inclement weather or exceptional circumstances. If the meeting date or location is changed, the Corps will issue a press release and post it on the web at <http://www.nwo.usace.army.mil/Media/News-Releases/> to announce the updated meeting details.

**Public Disclosure Statement.** If you wish to comment, you may mail or email your comments as indicated under the **ADDRESSES** section of this notice. Before including your address, phone number, email address, or any other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made available to the public at any time. While you can request in your comment for us to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Brenda S. Bowen,**

*Army Federal Register Liaison Officer.*

[FR Doc. 2018-27115 Filed 12-13-18; 8:45 am]

**BILLING CODE 3720-58-P**

## DEPARTMENT OF DEFENSE

### Department of the Army, Corps of Engineers

#### Availability of a Draft Environmental Impact Statement, Whittier Narrow Dam Safety Modification Study, Los Angeles County, California

**AGENCY:** Department of the Army, U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The U.S. Army Corps of Engineers (Corps) announces the availability of a Draft Environmental Impact Statement (EIS) for the Whittier Narrows Dam Safety Modification Study, Los Angeles County, California for review and comment. Pursuant to the National Environmental Policy Act (NEPA). The Corps has prepared a Draft EIS for the Whittier Narrows Dam Safety Modification Study (DSMS). The Draft EIS evaluates risk management plans (alternatives) to remediate safety concerns such as overtopping and seepage. The Draft EIS describes and analyses the impacts of risk management plans (RMPs) that are formulated, evaluated and compared through the DSMS process in order to identify a recommended RMP that

reduces risks to downstream life-safety and property associated with dam failure. Implementation of the recommended risk management plan would mitigate the intolerable Dam safety risk and allow the Dam to safely function as originally intended and authorized. Without this action, the Dam could fail resulting in life-threatening floods to downstream communities. The Proposed Action is needed to provide life-safety to the communities downstream of the Whittier Narrows Dam.

**DATES:** Written comments pursuant to the NEPA will be accepted until the close of business on January 28, 2019.

**ADDRESSES:** The document is available for review at:

(1) <https://www.spl.usace.army.mil/Missions/Civil-Works/Projects-Studies/Whittier-Narrows-Dam-Safety-Modification-Study/>.

(2) U.S. Army Corps of Engineers, Los Angeles District, 915 Wilshire Blvd., Los Angeles, CA 90017-3401.

**FOR FURTHER INFORMATION CONTACT:** Ms. Deborah Lamb, U.S. Army Corps of Engineers, Los Angeles District, phone number (213) 452-3798. Questions or comments regarding the Whittier Narrows Dam DSMS Draft EIS, contact Ms. Deborah Lamb by phone or by email to [Deborah.L.Lamb@usace.army.mil](mailto:Deborah.L.Lamb@usace.army.mil). or Whittier Narrows DSMS EIS *Whittier Narrows\_DSMS@usace.army.mil*.

For further information regarding the Whittier Narrows DSMS, contact Mr. Doug Chitwood, (213) 452 3587, or by email to [Douglas.E.Chitwood@usace.army.mil](mailto:Douglas.E.Chitwood@usace.army.mil).

#### SUPPLEMENTARY INFORMATION:

##### 1. Background Information.

Construction of Whittier Narrows Dam was completed in 1957 as an integral component of the Los Angeles County Drainage Area (LACDA) system of dams and channelized rivers authorized by Congress in the Flood Control Act of 1936. The Whittier Narrows Dam primary purpose is flood risk management with recreation added in the Flood Control Act of 1944 (Pub. L. 78-534). Whittier Narrows Dam is located approximately 11 miles east of downtown Los Angeles, Los Angeles County, CA. The dam protects over one million people and reduces economic damages to the communities downstream during flood events. The Corps has classified Whittier Narrows Dam as very high risk due to the potential for seepage and hydrologic issues during rare storms that could lead to failure. The DSMS and Draft EIS identify and evaluate alternatives to address these deficiencies and reduce the annual probability of failure and the

risk to life safety to within the Corps' tolerable risk guidelines as presented in Engineering Regulation 1110–2–1156.

A Notice of Intent to prepare the Draft EIS was published on July 22, 2013 in the **Federal Register**. A public scoping meeting was conducted on September 11, 2013 in the City of Pico Rivera, California. The Draft EIS is available for a 45-day review period pursuant to the NEPA.

**2. Risk Management Plans (Alternatives).** In addition to a No Action Alternative, the Draft EIS evaluates an array of remediation alternatives including: (1) Raising the crest elevation of the dam with a 12 foot high parapet wall on top of the crest, constructing an auxiliary labyrinth spillway adjacent to the existing spillway, and a trench drain and filter blanket; (2) placing a 10 foot wide roller compacted concrete series of steps on the downstream slope of the Dam embankments with trench drain and filter blanket.

**3. NEPA Scope of Analysis.** The Draft EIS evaluates the impacts of risk management plans on environmental resources and the human environment. Resources initially identified in the NEPA scope of analysis as potentially significant without implementation of mitigation measures include noise and vibration and recreation.

Resources initially identified in the NEPA scope of analysis as potentially significant without implementation of mitigation measures include, but are not limited to: Water quality, noise and vibration, air quality, socioeconomics and environmental justice, land use, recreation, visual and esthetic resources, traffic and transportation, historical and cultural resources, vegetation and wildlife, and special status species.

**Public Participation:** As part of the public involvement process, the Corps' Los Angeles District anticipates the public meeting will be held in January 2019. The public review meeting will allow participants the opportunity to comment on the Draft EIS. Attendance at the public hearing is not necessary to provide comments. Written comments may also be given to the contact listed under **FOR FURTHER INFORMATION CONTACT** section.

**Brenda S. Bowen,**

*Army Federal Register Liaison Officer.*

[FR Doc. 2018–27114 Filed 12–13–18; 8:45 am]

**BILLING CODE 3720–58–P**

## DEPARTMENT OF EDUCATION

[Docket ID ED–2017–IES–0081]

### Privacy Act of 1974; System of Records

**AGENCY:** Institute of Education Sciences, Department of Education.

**ACTION:** Notice of a new system of records.

**SUMMARY:** In accordance with the Privacy Act of 1974, as amended (Privacy Act), the Department of Education (the Department) publishes this notice of a new system of records entitled “Text Ed: A Study of Text Messaging to Improve College Enrollment Rates among Disadvantaged Adults (18–13–41).” This system contains individually identifying information voluntarily provided by grantees under the Department of Education's (Department's) Educational Opportunity Centers (EOC) program which were selected to participate in the study and adult participants who receive services from those grantees. The EOC program is one of the Department's TRIO programs and primarily focuses on disadvantaged adults. The information in this system will be used to conduct a rigorous study of the effectiveness of customized text messages as an enhancement to EOC services, examining whether the messages lead to increased college enrollment and Free Application for Federal Student Aid (FAFSA) completion rates among adults receiving support from EOCs.

**DATES:** Submit your comments on this new system of records notice on or before January 14, 2019.

This new system of records will become applicable upon publication in the **Federal Register** on December 14, 2018, unless the new system of records notice needs to be changed as a result of public comment. All proposed routine uses in the paragraph entitled “ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES” will become applicable on January 14, 2019, unless the new system of records notice needs to be changed as a result of public comment. The Department will publish any changes to the system of records or routine uses that result from public comment.

**ADDRESSES:** Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment

period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

• **Federal eRulemaking Portal:** Go to [www.regulations.gov](http://www.regulations.gov) to submit your comments electronically. Information on using [Regulations.gov](http://Regulations.gov), including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under the “Help” tab.

• **Postal Mail, Commercial Delivery, or Hand Delivery:** If you mail or deliver your comments about this modified system of records, address them to: SORN Coordinator, Institute of Education Sciences, U.S. Department of Education, Potomac Center Plaza, 550 12th Street SW, Room 4126, Washington, DC 20202.

**Privacy Note:** The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

**Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record:** On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

**FOR FURTHER INFORMATION CONTACT:** Teresa Cahalan, Institute of Education Sciences, U.S. Department of Education, Potomac Center Plaza, 550 12th Street SW, Room 4126, Washington, DC 20202, or by email at [IES\\_SORN@ed.gov](mailto:IES_SORN@ed.gov).

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), you may call the Federal Relay Service at 1–800–877–8339.

### SUPPLEMENTARY INFORMATION:

#### Introduction

The information contained in the system will be used to conduct a study of the effectiveness of personalized text messaging in improving the college enrollment and FAFSA completion rates of disadvantaged adults. The messaging will be implemented as an enhancement to services provided by Educational Opportunity Centers. The information collected will be used to describe the implementation of the study's text

messaging intervention and to estimate the impact of the intervention on study participants' rates of FAFSA completion and college enrollment.

**Accessible Format:** Individuals with disabilities can obtain this document in an accessible format (e.g., Braille, large print, audiotape, or compact disc) on request to the person listed under **FOR FURTHER INFORMATION CONTACT**.

**Electronic Access to This Document:** The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at: [www.govinfo.gov](http://www.govinfo.gov). At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: [www.federalregister.gov](http://www.federalregister.gov). Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: December 11, 2018.

**Mark Schneider,**

*Director, Institute of Education Sciences.*

#### **SYSTEM NAME AND NUMBER:**

Text Ed: A Study of Text Messaging to Improve College Enrollment Rates among Disadvantaged Adults (18–13–41).

#### **SECURITY CLASSIFICATION:**

Unclassified.

#### **SYSTEM LOCATION:**

MDRC, 19th Floor, 16 East 34th Street, New York City, NY 10016–4326 (contractor).

Signal Vine, 811 North Royal Street, Alexandria, VA 22314–1715 (subcontractor).

#### **SYSTEM MANAGER(S):**

Project's contracting officer representative, Institute of Education Sciences, U.S. Department of Education, Potomac Center Plaza, 550 12th Street SW, Room 4105, Washington, DC 20202.

#### **AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

The study is authorized under sections 171(b) and 173 of the Education Sciences Reform Act of 2002 (ESRA) (20 U.S.C. 9561(b) and 9563) and title IV, part A, subpart 2, chapter 1 of the Higher Education Act of 1965, as amended (20 U.S.C. 1070a–11–1070a18).

#### **PURPOSE(S) OF THE SYSTEM:**

The information contained in the records maintained in this system will be used to conduct a rigorous study of customized text messaging to improve the college enrollment and Free Application for Federal Student Aid (FAFSA) completion rates of adult participants in Educational Opportunity Centers (EOCs).

The study will address the following central research questions: Does providing personalized messages to EOC participants increase FAFSA completion rates? Does it increase college enrollment rates? What are participants' experiences with the text messages (for instance, how often do they receive the messages? How often do they text back in response?)? Secondary research questions for the study are: To what extent does the effectiveness of the messaging vary across EOC grantee sites? To what extent does the effectiveness vary across participant subgroups?

#### **CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

This system will contain records on adults participating in an impact study of customized text messaging to improve college enrollment and FAFSA completion rates. The system will contain records on approximately 6,000 adult participants at up to 20 EOCs.

#### **CATEGORIES OF RECORDS IN THE SYSTEM:**

The information in the records in this system will include, but will not necessarily be limited to the following information about participants: Full name, address, telephone number, email address, date of birth, sex, race/ethnicity, income, Social Security number, educational background and plans, whether the participant is a caretaker for children, parents' educational background, primary language spoken, FAFSA completion status, and college enrollment status. Participants' contact and background information will be used to send out the text messages and customize the content of the messages. Social Security numbers will be used, along with participants' names and dates of birth, to extract college enrollment statuses and FAFSA completion statuses from the databases of the National Student Clearinghouse and the Department's Federal Student Aid office (FSA), respectively.

#### **RECORD SOURCE CATEGORIES:**

Participant background data will be obtained through administrative records maintained by study EOCs and through a survey of study participants. College

enrollment data will be obtained through the National Student Clearinghouse. FAFSA completion data will be obtained through administrative records maintained by FSA. Participants' texting records will be obtained from the study's text message provider, Signal Vine.

#### **ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

The Department may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. The Department may make these disclosures on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Privacy Act of 1974, as amended (Privacy Act), under a computer matching agreement. Any disclosure of individually identifiable information from a record in this system must also comply with the requirements of section 183 of the ESRA (20 U.S.C. 9573) providing for confidentiality standards that apply to all collection, reporting, and publication of data by the Institute of Education Sciences.

(1) *Contract Disclosure.* If the Department contracts with an entity for the purpose of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. As part of such a contract, the Department will require the contractor to agree to maintain safeguards to protect the security and confidentiality of the records disclosed from the system.

(2) *Obtaining Participants' Academic Records Disclosure.* In order to permit the Department or its contractor to obtain a participant's academic records from the National Student Clearinghouse consistent with the purpose of the study, the Department or its contractor may disclose records to the National Student Clearinghouse.

(3) *Participant Identification Disclosure.* In order to permit EOC staff to communicate via text message with participants assigned to receive text messages consistent with the purpose of the study, the Department may disclose to each participating EOC the identities of the Center's adults assigned to receive text messages.

(4) *Research Disclosure.* The Department may disclose information from this system of records to qualified researchers solely for the purpose of carrying out specific research that is

compatible with the purpose(s) of this system of records. The researcher must agree to maintain safeguards to protect the security and confidentiality of such records.

**POLICIES AND PRACTICES FOR STORAGE OF RECORDS:**

Records in this system are maintained in a secure, password-protected electronic system.

**POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:**

Records in this system will be indexed and retrieved by a unique number assigned to each individual that will be cross-referenced by the individual's name on a separate list.

**POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:**

The Department will submit a retention and disposition schedule that covers the records contained in this system to the National Archives and Records Administration (NARA) for review. The records will not be destroyed until such time as NARA approves said schedule.

**ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:**

Security protocols for this system of records meet all required security standards. The contractor will be required to ensure that information identifying individuals is in files physically separated from other research data and electronic files identifying individuals are separated from other electronic research data files. The contractor and subcontractor will maintain security of the complete set of all master data files and documentation. Access to individually identifiable data will be strictly controlled. All information will be kept in locked file cabinets during nonworking hours, and work on hardcopy data will take place in a single room, except for data entry.

Physical security of electronic data also will be maintained. Security features that protect project data will include: Password-protected accounts that authorize users to use the contractor's and subcontractor's systems but to access only specific network directories and network software; user rights and directory and file attributes that limit those who can use particular directories and files and determine how they can use them; and additional security features that the network administrators will establish for projects as needed. The contractor's and subcontractor's employees who "maintain" (collect, maintain, use, or disseminate) data in this system must comply with the requirements of the

Privacy Act and the confidentiality standards in section 183 of the ESRA (20 U.S.C. 9573).

**RECORD ACCESS PROCEDURES:**

If you wish to request access to your records, you must contact the system manager at the address listed above. Your request must provide necessary particulars of your full name, address, telephone number, and any other identifying information requested by the Department while processing the request, to distinguish between individuals with the same name. Your request must meet the requirements of regulations in 34 CFR 5b.5, including proof of identity.

**CONTESTING RECORD PROCEDURES:**

If you wish to contest the content of a record regarding you in the system of records, contact the system manager at the address listed above. Your request must meet the requirements of the regulations in 34 CFR 5b.7.

**NOTIFICATION PROCEDURES:**

If you wish to inquire whether a record exists regarding you in this system, you must contact the system manager at the address listed above. You must provide necessary particulars of your full name, address, and telephone number, and any other identifying information requested by the Department while processing the request, to distinguish between individuals with the same name. Your request must meet the requirements of the Department's Privacy Act regulations at 34 CFR 5b.5, including proof of identity.

**EXEMPTIONS PROMULGATED FOR THE SYSTEM:**

None.

**HISTORY:**

None.

[FR Doc. 2018-27144 Filed 12-13-18; 8:45 am]

**BILLING CODE 4000-01-P**

**DEPARTMENT OF EDUCATION**

**Docket No. ED-2018-ICCD-0102]**

**Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Guaranty Agencies Security Self-Assessment and Attestation**

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

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, ED is

proposing an extension of an existing information collection.

**DATES:** Interested persons are invited to submit comments on or before January 14, 2019.

**ADDRESSES:** To access and review all the documents related to the information collection listed in this notice, please use <http://www.regulations.gov> by searching the Docket ID number ED-2018-ICCD-0102. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 550 12th Street SW, PCP, Room 9086, Washington, DC 20202-0023.

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Beth Grebeldinger, 202-377-4018.

**SUPPLEMENTARY INFORMATION:** The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

*Title of Collection:* Guaranty Agencies Security Self-assessment and Attestation.

*OMB Control Number:* 1845–0134.

*Type of Review:* An extension of an existing information collection.

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

*Total Estimated Number of Annual Responses:* 24.

*Total Estimated Number of Annual Burden Hours:* 7,584.

*Abstract:* This is a request for an extension of the approved information collection used by Federal Student Aid (FSA) to ensure that all data collected and managed by Guaranty Agencies (GAs) in support federal student financial aid programs is secure. FSA initiated a formal assessment program for ensuring the GAs have security protocols in place to protect the confidentiality and integrity of data entrusted to FSA by students and families. This assessment is designed to identify security deficiencies based on the federal standards described in the National Institute of Standards and Technology publications.

Dated: December 11, 2018.

**Kate Mullan,**

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

[FR Doc. 2018–27127 Filed 12–13–18; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

### Energy Information Administration

#### Agency Information Collection Extension With Changes

**AGENCY:** U.S. Energy Information Administration (EIA), U.S. Department of Energy (DOE).

**ACTION:** Notice.

**SUMMARY:** EIA submitted an information collection request for extension with changes as required by the Paperwork Reduction Act of 1995. The information collection requests a three-year extension of its Commercial Buildings Energy Consumption Survey (CBECS), OMB Control Number 1905–0145. The first part of the collection gathers detailed information about buildings that are used for commercial purposes (such as building size, age, structural characteristics, operating hours, ownership, energy sources and uses, and the types of energy-related equipment used) from building owners, managers, and tenants. The second part of the collection assembles monthly

energy consumption and expenditures from the energy suppliers of the sampled buildings.

**DATES:** Comments on this information collection must be received no later than January 14, 2019. If you anticipate any difficulties in submitting your comments by the deadline, contact the DOE Desk Officer at (202) 395–4718.

**ADDRESSES:** Written comments should be sent to: DOE Desk Officer: Brandon DeBruhl, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street NW, Washington, DC 20503. *Brandon\_F\_DeBruhl@omb.eop.gov* and to Joelle Michaels, CBECS Survey Manager, U.S. Department of Energy, EI–22, 1000 Independence Ave. SW, Washington, DC 20585 *joelle.michaels@eia.gov*.

**FOR FURTHER INFORMATION CONTACT:** Joelle Michaels (202) 586–8952, or email *joelle.michaels@eia.gov*. Form EIA–871 and its instructions can be viewed at <https://www.eia.gov/survey/>.

#### SUPPLEMENTARY INFORMATION:

This information collection request contains

(1) *OMB No.:* 1905–0145;

(2) *Information Collection Request*

*Title:* Commercial Buildings Energy Consumption Survey (CBECS);

(3) *Type of Request:* Three-year extension with changes;

(4) *Purpose:* CBECS collects data on energy consumed in commercial buildings and the characteristics of the buildings. The surveys fulfill planning, analyses and decision-making needs of DOE, other federal agencies, state and local governments, and the private sector. Respondents are owners/managers of selected commercial buildings and their energy suppliers.

(4a) *Changes to Information Collection:* The proposed design, procedures, and forms for the 2018 CBECS reflect a number of changes from the 2012 CBECS. These changes include: First, the option for respondents to complete the CBECS using a self-administered online questionnaire; Second, Forms EIA–871B *Authorization Form*, EIA–871G *Worksheet 1: Characteristics, Energy Sources, and Equipment*, and EIA–871H *Worksheet 2: Energy Amounts Used and Dollars Spent* are no longer needed and are deleted; Third, most of the real-time automatic edits from the questionnaire are deleted to reduce interview time and burden; Fourth, building respondents will not be asked to report monthly energy data; and Fifth, numerous individual question changes, additions, and deletions are contained in Forms

EIA–871A, C, D, E, F, I and J to keep the survey content relevant to data user needs.

(5) *Annual Estimated Number of Respondents:* 5,718;

(6) *Annual Estimated Number of Total Responses:* 5,718;

(7) *Annual Estimated Number of Burden Hours:* 2,618;

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* The estimated annualized cost of the burden hours is \$193,784 ((10,472 total burden hours \* \$74.02)/4 year collection cycle). EIA estimates that there are no additional costs to respondents associated with this survey other than the costs associated with the burden hours.

**Statutory Authority:** Section 13(b) of the Federal Energy Administration Act of 1974, Public Law 93–275, codified at 15 U.S.C. 772(b).

Signed in Washington, DC, on December 2, 2018.

**Nanda Srinivasan,**

*Director, Office of Survey Development and Statistical Integration, U.S. Energy Information Administration.*

[FR Doc. 2018–27124 Filed 12–13–18; 8:45 am]

**BILLING CODE 6450–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2018–0605; FRL–9987–41]

### Request for Comments on the Experts Nominated To Be Considered for Ad Hoc Participation and Possible Membership on the Toxic Substances Control Act (TSCA), Science Advisory Committee on Chemicals (SACC)

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

**ACTION:** Notice.

**SUMMARY:** EPA is requesting public review and welcomes comments on the scientific experts nominated to be considered for *ad hoc* participation and possible membership on the Toxic Substances Control Act (TSCA) Science Advisory Committee on Chemicals (SACC). Nominations that were received in response to a prior notice are being considered for *ad hoc* participation on an as needed basis for the TSCA SACC's peer reviews of the EPA's risk evaluations for chemical substances addressed under the TSCA. In addition, all nominees are under consideration for TSCA SACC membership to fulfill short term needs when a vacancy occurs on the chartered Committee.

**DATES:** Submit comments on or before January 14, 2019.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2018–0605, 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:** Dr. Todd Peterson, DFO, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–6428; email address: [peterson.todd@epa.gov](mailto:peterson.todd@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. General Information**

###### *A. Does this action apply to me?*

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing and risk evaluations of chemical substances under the Toxic Substances Control Act (TSCA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

###### *B. List of Nominees and Affiliations*

Brief biographical sketches of nominees to be considered for *ad hoc* participation and possible membership on the TSCA SACC are posted on the TSCA SACC website at <http://www.epa.gov/tsca-peer-review> or may be obtained from the OPPT Docket at <http://www.regulations.gov>.

*C. What should I consider as I prepare my comments regarding nominees for EPA?*

1. *Submitting CBI.* Do not submit CBI information to EPA through [regulations.gov](http://www.regulations.gov) or email. If your comments contain any information that

you consider to be CBI or otherwise protected, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** to obtain special instructions before submitting your comments.

2. *Comments regarding nominees to be considered for ad hoc participation and possible membership on the TSCA SACC.* As part of the broader process for developing a pool of candidates, the Office of Science Coordination and Policy (OSCP) staff solicited nominations from the public and stakeholder communities of prospective candidates for service as *ad hoc* reviewers and possibly members of TSCA SACC (“Request for Nominations of Experts To Consider for ad hoc Participation and Possible Membership on the Toxic Substances Control Act (TSCA), Science Advisory Committee on Chemicals (SACC)”, **Federal Register** 83:178 (September 13, 2018) p. 46487).

The list of nominees to be considered for *ad hoc* participation and possible membership on the TSCA SACC will be posted on the TSCA SACC website at <http://www.epa.gov/tsca-peer-review> or may be obtained from the OPPT Docket at <http://www.regulations.gov>. EPA requests that the public provide information on the nominees that will assist the Agency when selecting *ad hoc* participants and members for the TSCA SACC.

All comments must be provided to the docket number EPA–HQ–OPPT–2018–0605 on or before January 14, 2019. Please follow the instructions for electronic submission of comments to the docket available at <http://www.regulations.gov>. Questions should be directed to the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before January 14, 2019.

##### **II. Background**

The Science Advisory Committee on Chemicals (SACC) was established by EPA in 2016 under the authority of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, Public Law 114–182, 140 Stat. 448 (2016), and operates in accordance with the Federal Advisory Committee Act (FACA) of 1972. The SACC supports activities under the Toxic Substances Control Act (TSCA), 15 U.S.C. 2601 *et seq.*, the Pollution Prevention Act (PPA), 42 U.S.C. 13101 *et seq.*, and other applicable statutes. The SACC provides independent scientific advice and recommendations to the EPA on the scientific and technical aspects of risk assessments, methodologies, and pollution prevention measures and approaches for chemicals regulated under TSCA.

The SACC is comprised of experts in: Toxicology; environmental risk assessment; exposure assessment; and related sciences (e.g., synthetic biology, pharmacology, biotechnology, nanotechnology, biochemistry, biostatistics, PBPK modeling, computational toxicology, epidemiology, environmental fate, and environmental engineering and sustainability). The SACC currently consists of 26 members. When needed, the committee will be assisted in their reviews by *ad hoc* reviewers with specific expertise in the topics under consideration.

Through a prior **Federal Register** notice (“Request for Nominations of Experts to Consider for ad hoc Participation and Possible Membership on the Toxic Substances Control Act (TSCA), Science Advisory Committee on Chemicals (SACC)” (83 FR 46487, September 13, 2018), EPA sought nominations to create a pool of experts who can be available to the SACC to assist in reviews conducted by the Committee. EPA anticipates selecting experts from this pool, as needed, to assist the SACC in their review of EPA’s risk evaluations for the chemical substances addressed under the TSCA: 1,4-Dioxane, Asbestos; Cyclic Aliphatic Bromide Cluster (HBCD); 1-Bromopropane; Perchloroethylene; Trichloroethylene; Carbon Tetrachloride; Methylene Chloride; and *n*-Methylpyrrolidone.

In addition, EPA anticipates selecting from this pool of experts, as needed, to appoint SACC members to fulfill short term needs when a vacancy occurs on the Committee due to resignation or reasons other than expiration of a term.

**Authority:** 15 U.S.C. 2625 *et seq.*; 5 U.S.C. Appendix 2 *et seq.*

Dated: December 7, 2018.

**Stanley Barone, Jr.,**

*Acting Director, Office of Science Coordination and Policy.*

[FR Doc. 2018–27155 Filed 12–13–18; 8:45 am]

**BILLING CODE 6560–50–P**

#### **ENVIRONMENTAL PROTECTION AGENCY**

**[ER–FRL–9042–8]**

##### **Environmental Impact Statements; Notice of Availability**

*Responsible Agency:* Office of Federal Activities, General Information 202–564–5632 or <https://www.epa.gov/nepa/>.

Weekly receipt of Environmental Impact Statements

Filed 12/03/2018 Through 12/07/2018



Pursuant to 40 CFR 1506.9.

#### Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: <https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search>.

*EIS No. 20180307, Draft, USFS, OR,* Black Mountain Vegetation Management Project, Comment Period Ends: 01/28/2019, Contact: Elysia Retzlaff 541-416-6436

*EIS No. 20180308, Draft, USACE, CA,* Whittier Narrows Dam Safety Modification Study, Comment Period Ends: 01/28/2019, Contact: Deborah Lamb 213-452-3798

*EIS No. 20180309, Draft, FHWA, IN, I69* Ohio River Crossing Project, Comment Period Ends: 02/08/2019, Contact: Michelle Allen 317-226-7344

*EIS No. 20180310, Final, BLM, WY,* Riley Ridge to Natrona, Review Period Ends: 01/14/2019, Contact: Mark Makiewicz 435-636-3616

*EIS No. 20180311, Final, FAA, TX,* ADOPTION—DART Cotton Belt Corridor Regional Rail Project, Contact: John MacFarlane 817-222-5681

The Federal Aviation Administration (FAA) has adopted the Federal Transit Administration's Final EIS No. 20180305, filed 11/30/2018 with the EPA. The FAA was a cooperating agency on this project. Therefore, recirculation of the document is not necessary under Section 1506.3(c) of the CEQ regulations.

#### Amended Notices

*EIS No. 20180260, Draft Supplement, USFS, ND,* Northern Great Plains Management Plans Revision (Dakota Prairie Oil and Gas RFDS SEIS), Comment Period Ends: 01/16/2019, Contact: Leslie Ferguson 701-989-7308, Revision to FR Notice Published 11/02/2018; Extending Comment Period from 12/17/2018 to 01/16/2019.

*EIS No. 20180304, Draft, VA, CA,* Draft Programmatic Environmental Impact Statement and National Historic Preservation Act Section 106 Consultation West Los Angeles Medical Center Campus Proposed Master Plan for Improvements and Reconfiguration, Comment Period Ends: 01/29/2019, Contact: Glenn Elliott 202-632-5879, Revision to FR Notice Published 12/07/2018; Extending the Comment Period from 01/21/2019 to 01/29/2019.

*EIS No. 20180305, Final, FTA, TX,* DART Cotton Belt Corridor Regional

Rail Project, Contact: Melissa Foreman 817-978-0554

Revision to FR Notice Published 12/07/2018; as required by Public Law 114-94 and 23 U.S.C. 139(n)(2) and 49 U.S.C. 304a(b), the FTA and the FAA have issued a combined FEIS and Record of Decision. Therefore, there will be no 30-day review period for the FEIS prior to the issuance of a Record of Decision.

Dated: December 10, 2018.

**Robert Tomiak,**

*Director, Office of Federal Activities.*

[FR Doc. 2018-27072 Filed 12-13-18; 8:45 am]

**BILLING CODE 6560-50-P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Tuesday, December 18, 2018, to consider the following matters:

*Summary Agenda:* No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of Minutes of a Board of Directors' Meeting Previously Distributed.

*Memorandum and resolution re:* Notice of Proposed Rulemaking: Revisions to Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds.

*Memorandum and resolution re:* Final Rule: Regulatory Capital Rule: Implementation and Transition of the Current Expected Credit Losses Methodology for Allowances and Related Adjustments to the Regulatory Capital Rule and Conforming Amendments to Other Regulations.

*Memorandum and resolution re:* Notice of Proposed Rulemaking to (1) Rescind Regulations Transferred from the Former Office of Thrift Supervision, Part 390, Subpart P—Lending and Investment; (2) Amend Part 365, Subpart A—Real Estate Lending Standards; and (3) Rescind Part 365, Subpart B—Registration of Residential Mortgage Loan Originators.

*Memorandum and resolution re:* Notice of Proposed Rulemaking to Increase the Major Assets Threshold Under the Depository Institutions Management Interlocks Act.

*Memorandum and resolution re:* Final Rule: Technical Amendments to Depository Institutions Management Interlocks Act (DIMIA) Regulations.

*Memorandum and resolution re:* Final Rule: Expanded Exam Cycle for Certain

Small Insured Depository Institutions and U.S. Branches and Agencies of Foreign Banks.

*Memorandum and resolution re:* Final Rule: Limited Exception for a Capped Amount of Reciprocal Deposits from Treatment as Brokered Deposits.

*Memorandum and resolution re:* Advanced Notice of Proposed Rulemaking Relating to Brokered Deposits.

*Memorandum and resolution re:* Notice of Proposed Rulemaking: Company-Run Stress Testing Requirements for FDIC-supervised State Nonmember Banks and State Savings Associations.

*Memorandum and resolution re:* Notice of Proposed Rulemaking: Revisions to the Deposit Insurance Assessment System.

*Memorandum and resolution re:* Designated Reserve Ratio for 2019.

Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors.

### Discussion Agenda

*Memorandum and resolution re:* Proposed 2019 Operating Budget.

*Briefing:* Update of Projected Deposit Insurance Fund Losses, Income, and Reserve Ratios for the Restoration Plan.

The meeting will be held in the Board Room located on the sixth floor of the FDIC Building located at 550 17th Street NW, Washington, DC.

This Board meeting will be Webcast live via the internet and subsequently made available on-demand approximately one week after the event. Visit <http://fdic.windrosemedia.com> to view the event. If you need any technical assistance, please visit our Video Help page at: <https://www.fdic.gov/video.html>.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call 703-562-2404 (Voice) or 703-649-4354 (Video Phone) to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at 202-898-7043.

Dated: December 12, 2018.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 2018-27229 Filed 12-12-18; 4:15 pm]

**BILLING CODE P**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company



Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 10, 2019.

*A. Federal Reserve Bank of Dallas* (Robert L. Triplett III, Senior Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *Bright Force Holding, LLC, Lewisville, Texas*; to become a bank holding company by acquiring voting shares of ABNA Holdings, Inc., and thereby indirectly acquire American Bank, National Association, both of Dallas, Texas.

Board of Governors of the Federal Reserve System, December 11, 2018.

**Yao-Chin Chao,**

*Assistant Secretary of the Board.*

[FR Doc. 2018-27113 Filed 12-13-18; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

#### Final Effect of Designation of a Class of Employees for Addition to the Special Exposure Cohort

**AGENCY:** National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention, Department of Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** HHS gives notice concerning the final effect of the HHS decision to designate a class of employees from the Sandia National Laboratories in Albuquerque, New Mexico, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000.

**FOR FURTHER INFORMATION CONTACT:** Stuart L. Hinnefeld, Director, Division of Compensation Analysis and Support, NIOSH, 1090 Tusculum Avenue, MS C-46, Cincinnati, OH 45226-1938, Telephone 877-222-7570. Information requests can also be submitted by email to [DCAS@CDC.GOV](mailto:DCAS@CDC.GOV).

#### SUPPLEMENTARY INFORMATION:

**Authority:** 42 U.S.C. 7384q(b). 42 U.S.C. 7384l(14)(C).

On October 18, 2018, as provided for under 42 U.S.C. 7384l(14)(C), the Secretary of HHS designated the following class of employees as an addition to the SEC:

All employees of the Department of Energy, its predecessor agencies, and its contractors or subcontractors who worked in any area at the Sandia National Laboratories in Albuquerque, New Mexico, during the period from January 1, 1995, through December 31, 1996, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees included in the Special Exposure Cohort.

This designation became effective on October 18, 2018. Therefore, beginning on November 17, 2018, members of this class of employees, defined as reported in this notice, became members of the SEC.

**Frank J. Hearl,**

*Chief of Staff, National Institute for Occupational Safety and Health.*

[FR Doc. 2018-27135 Filed 12-13-18; 8:45 am]

**BILLING CODE 4163-19-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

#### Decision To Evaluate a Petition To Designate a Class of Employees From the Y-12 Plant in Oak Ridge, Tennessee, To Be Included in the Special Exposure Cohort

**AGENCY:** National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control

and Prevention, Department of Health and Human Services.

**ACTION:** Notice.

**SUMMARY:** NIOSH gives notice of a decision to evaluate a petition to designate a class of employees from the Y-12 Plant in Oak Ridge, Tennessee, to be included in the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000.

**FOR FURTHER INFORMATION CONTACT:** Stuart L. Hinnefeld, Director, Division of Compensation Analysis and Support, National Institute for Occupational Safety and Health, 1090 Tusculum Avenue, MS C-46, Cincinnati, OH 45226-1938, Telephone 877-222-7570. Information requests can also be submitted by email to [DCAS@CDC.GOV](mailto:DCAS@CDC.GOV).

**SUPPLEMENTARY INFORMATION:** Authority: 42 CFR 83.9-83.12. Pursuant to 42 CFR 83.12, the initial proposed definition for the class being evaluated, subject to revision as warranted by the evaluation, is as follows:

*Facility:* Y-12 Plant.

*Location:* Oak Ridge, Tennessee.

*Job Titles and/or Job Duties:* "All employees of the Department of Energy, its predecessor agencies, and its contractors and subcontractors who worked at the Y-12 Plant in Oak Ridge, Tennessee, during the period from January 1, 1958 through December 31, 1976, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees in the SEC."

*Period of Employment:* January 1, 1958 through December 31, 1976.

**Frank J. Hearl,**

*Chief of Staff, National Institute for Occupational Safety and Health.*

[FR Doc. 2018-27136 Filed 12-13-18; 8:45 am]

**BILLING CODE 4163-19-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

[Document Identifiers CMS-10391, CMS-10410 and CMS-10142]

#### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Centers for Medicare & Medicaid Services, HHS.

**ACTION:** Notice.

**SUMMARY:** The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to

comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**DATES:** Comments on the collection(s) of information must be received by the OMB desk officer by January 14, 2019.

**ADDRESSES:** When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395-5806, OR Email: [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov).

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at <https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html>.

1. Email your request, including your address, phone number, OMB number, and CMS document identifier, to [Paperwork@cms.hhs.gov](mailto:Paperwork@cms.hhs.gov).

2. Call the Reports Clearance Office at (410) 786-1326.

**FOR FURTHER INFORMATION CONTACT:** William Parham at (410) 786-4669.

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term "collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or

requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Methods for Assuring Access to Covered Medicaid Services Under 42 CFR 447.203 and 447.204; *Use:* Current regulations at 42 CFR 447.203(b) require states to develop an access monitoring review plan (AMRP) that is updated at least every three years for: Primary care services, physician specialist services, behavioral health services, pre and post-natal obstetric services (including labor and delivery), and home health services. When states reduce rates for other Medicaid services, they must add those services to the AMRP and monitor the effects of the rate reductions for 3 years. If access issues are detected, a state must submit a corrective action plan to CMS within 90 days and work to address the issues within 12 months. Section 447.203(b)(7) requires that states have mechanisms to obtain ongoing beneficiary and provider feedback. A state is also required to maintain a record of data on public input and how the state responded to the input. Prior to submitting proposals to reduce or restructure Medicaid service payment rates, states must receive input from beneficiaries, providers, and other affected stakeholders on the extent of beneficiary access to the affected services.

The information is used by states to document that access to care is in compliance with section 1902(a)(30)(A) of the Social Security Act, to identify issues with access within a state's Medicaid program, and to inform any necessary programmatic changes to address issues with access to care. CMS uses the information to make informed approval decisions on State plan amendments that propose to make Medicaid rate reductions or restructure payment rates and to provide the necessary information for CMS to monitor ongoing compliance with section 1902(a)(30)(A). Beneficiaries, providers and other affected

stakeholders may use the information to raise access issues to state Medicaid agencies and work with agencies to address those issues. *Form Number:* CMS-10391 (OMB control number: 0938-1134); *Frequency:* Annually; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 51; *Number of Responses:* 212; *Total Annual Hours:* 12,262. (For questions regarding this collection contact Jeremy Silanskis at 410-786-1592.)

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicaid Program; Eligibility Changes under the Affordable Care Act of 2010; *Use:* The eligibility systems are essential to the goal of increasing coverage in insurance affordability programs while reducing administrative burden on states and consumers. The electronic transmission and automation of data transfers are key elements in managing the expected insurance affordability program caseload that started in 2014. Accomplishing the same work without these information collection requirements would not be feasible. *Form Number:* CMS-10410 (OMB control number: 0938-1147); *Frequency:* Occasionally; *Affected Public:* Individuals or Households, and State, Local, and Tribal Governments; *Number of Respondents:* 25,500,096; *Total Annual Responses:* 25,500,333; *Total Annual Hours:* 21,276,302. (For policy questions regarding this collection contact Stephanie Bell at 410-786-0617.)

3. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Bid Pricing Tool (BPT) for Medicare Advantage (MA) Plans and Prescription Drug Plans (PDP); *Use:* The competitive bidding process defined by the "The Medicare Prescription Drug, Improvement, and Modernization Act" (MMA) applies to both the MA and Part D programs. It was first used for Contract Year 2006. It is an annual process that encompasses the release of the MA rate book in April, the bid's that plans submit to CMS in June, and the release of the Part D and RPO benchmarks, which typically occurs in August.

CMS requires that Medicare Advantage Organizations (MAOs) and Prescription Drug Plans (PDPs) complete the BPT as part of the annual bidding process. During this process, organizations prepare their proposed actuarial bid pricing for the upcoming contract year and submit them to CMS for review and approval. The purpose of the BPT is to collect the actuarial

pricing information for each plan. It is an Excel workbook with multiple worksheets and special functions through which bidders present to CMS their plan pricing information. Bidders enter information, such as plan experience, projected enrollment, and risk profile, and the BPT calculates the plan premiums and other values that drive the bidding process. CMS maintains and updates each BPT file and releases new versions every April.

The BPT files may be downloaded from the Health Plan Management System website (or HPMS), which is a restricted-access website, so users must obtain approval from CMS before using it. From HPMS, the BPT files may be downloaded as part of the Plan Benefit Package (or PBP) software, or they may be downloaded as stand-alone blank files. These files are made available to users on the first Monday of April every year and an HPMS memo is released announcing the software availability. Plan sponsors are required to upload the completed BPTs to HPMS by the first Monday in June each year.

MAOs and PDPs use the Bid Pricing Tool (BPT) software to develop their actuarial pricing bid. The information provided in the BPT is the basis for the plan's enrollee premiums and CMS payments for each contract year. The tool collects data such as medical expense development (from claims data and/or manual rating), administrative expenses, profit levels, and projected plan enrollment information. By statute, completed BPTs are due to CMS by the first Monday of June each year. *Form Number:* CMS-10142 (OMB control number: 0938-0944); *Frequency:* Yearly; *Affected Public:* Private Sector, Business or other for-profits and Not-for-profit institution; *Number of Respondents:* 555; *Total Annual Responses:* 4,995; *Total Annual Hours:* 149,850. (For policy questions regarding this collection contact Rachel Shevland at 410-786-3026.)

Dated: December 11, 2018.

**William N. Parham, III,**

*Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. 2018-27104 Filed 12-13-18; 8:45 am]

**BILLING CODE 4120-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

[Document Identifier: CMS-3070G-I and CMS-10692]

#### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Centers for Medicare & Medicaid Services, HHS.

**ACTION:** Notice.

**SUMMARY:** The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**DATES:** Comments must be received by February 12, 2019.

**ADDRESSES:** When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to <http://www.regulations.gov>. Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number \_\_\_\_\_, Room C4-26-05, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of the following:

1. Access CMS' website address at website address at <https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html>.

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to [Paperwork@cms.hhs.gov](mailto:Paperwork@cms.hhs.gov).

3. Call the Reports Clearance Office at (410) 786-1326.

**FOR FURTHER INFORMATION CONTACT:** Reports Clearance Officer, William Parham, at (410) 786-4669.

#### SUPPLEMENTARY INFORMATION:

##### Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS-3070G-I ICF/IID Survey Report Form and Supporting Regulations  
CMS-10692 Home and Community Based Services (HCBS) Incident Management Survey

Under the PRA (44 U.S.C. 3501-3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term "collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

#### Information Collection

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* ICF/IID Survey Report Form and Supporting Regulations; *Use:* The information collected with forms 3070G-I is used to determine the level of compliance with Intermediate Care Facilities for Individuals with Intellectual Disabilities

(ICF/IID) CoPs necessary to participate in the Medicare/Medicaid program. Information needed to monitor the State's performance as well as the ICF/IID program in general, is available to CMS only through the use of information abstracted from the survey report form. The form serves as a coding worksheet designed to facilitate data entry and retrieval into the Automated Survey Processing Environment Suite (ASPEN) in the State and at the CMS regional offices. *Form Number:* CMS-3070G-I (OMB control number: 0938-0062); *Frequency:* Reporting—Yearly; *Affected Public:* Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 6,100; *Total Annual Responses:* 6,100; *Total Annual Hours:* 18,300. (For policy questions regarding this collection contact Melissa Rice at 410-786-3270.)

**2. Type of Information Collection**  
*Request:* New collection (Request for a new OMB control number); *Title of Information Collection:* Home and Community Based Services (HCBS) Incident Management Survey; *Use:* The Survey will be disseminated to all 51 state Medicaid agencies (including the District of Columbia) to assess incident management systems in 1915(c) waivers. States will be surveyed to identify methods and promising practices for identifying, reporting, tracking, and resolving incidents of abuse, neglect, and exploitation. The survey results will also be used to review the strengths and weaknesses of each state's incident management system and will inform guidance to help ensure compliance with sections 1902(a)(30)(A) and 1915(c)(2)(A) of the Social Security Act. *Form Number:* CMS-10692 (OMB control number: 0938-TBD); *Frequency:* Once and on occasion; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 51; *Total Annual Responses:* 102; *Total Annual Hours:* 153. (For policy questions regarding this collection contact Ryan Shannahan at 410-786-0295.)

Dated: December 11, 2018.

**William N. Parham, III,**  
*Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. 2018-27101 Filed 12-13-18; 8:45 am]

**BILLING CODE 4120-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Proposed Collection; 60-Day Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery (NIAID)

**AGENCY:** National Institutes of Health, HHS.

**ACTION:** Notice.

**SUMMARY:** In compliance with the requirement of the Paperwork Reduction Act of 1995 to provide opportunity for public comment on proposed data collection projects, the National Institute of Allergy and Infectious Diseases (NIAID) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

**DATES:** Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

**FOR FURTHER INFORMATION CONTACT:** To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Ms. Dione Washington, Health Science Policy Analyst, Office of Strategic Planning, Initiative Development and Analysis, 5601 Fishers Lane, Rockville, Maryland 20892 or call non-toll-free number (240) 669-2100 or email your request, including your address to: [washingtondi@niaid.nih.gov](mailto:washingtondi@niaid.nih.gov). Formal requests for additional plans and instruments must be requested in writing.

**SUPPLEMENTARY INFORMATION:** Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires: Written comments and/or suggestions from the public and affected agencies are invited to address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the

proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

*Proposed Collection Title:* Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery, 0925-0668, Expiration Date 2/28/2019, EXTENSION, National Institute of Allergy and Infectious Diseases (NIAID).

*Need and Use of Information Collection:* There are no changes being requested for this submission. The proposed information collection activity provides a means to garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide information about the NIAID's customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the NIAID and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 2511.

#### ESTIMATED ANNUALIZED BURDEN HOURS

Type of collection	Number of respondents	Annual frequency per response	Hours per response	Total hours
Customer satisfaction surveys .....	4000	1	30/60	2000
In-Depth Interviews (IDIs) or Small Discussion Groups .....	50	1	90/60	75

## ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of collection	Number of respondents	Annual frequency per response	Hours per response	Total hours
Individual Brief Interviews .....	50	1	15/60	13
Focus Groups .....	30	1	2	60
Pilot testing surveys .....	25	1	30/60	13
Conferences and Training Pre- and Post-surveys .....	500	1	30/60	250
Website or Software Usability Tests .....	50	1	2	100
Total .....	4705	4705	.....	2511

Dated: November 30, 2018.

**Brandie K. Taylor Bumgardner,**

*Project Clearance Liaison, National Institute of Allergy and Infectious Diseases, National Institutes of Health.*

[FR Doc. 2018-27145 Filed 12-13-18; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Proposed Collection; 60-Day Comment Request; International Research Fellowship Award Program of the (National Institute on Drug Abuse)

**AGENCY:** National Institutes of Health, HHS.

**ACTION:** Notice.

**SUMMARY:** In compliance with the requirement of the Paperwork Reduction Act of 1995 to provide opportunity for public comment on proposed data collection projects, the National Institute on Drug Abuse (NIDA), will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

**DATES:** Comments regarding this information collection are best assured

of having their full effect if received within 60 days of the date of this publication.

**FOR FURTHER INFORMATION CONTACT:** To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Dr. Steve Gust, Director, NIDA International Program, National Institute on Drug Abuse, National Institutes of Health, 6001 Executive Blvd. Bethesda, Maryland 20892-0234, or call non-toll-free number (301) 402-1118 or Email your request, including your address to: [sgust@nida.nih.gov](mailto:sgust@nida.nih.gov). Formal requests for additional plans and instruments must be requested in writing.

**SUPPLEMENTARY INFORMATION:** Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires: written comments and/or suggestions from the public and affected agencies are invited to address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and

clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

**Proposed Collection Title:** International Research Fellowship Award Program 0925-0733, Expiration date February 28, 2019, REVISION, National Institute on Drug Abuse, National Institutes of Health.

**Need and Use of Information Collection:** The purpose of this information collection is to identify participants for matriculation into the program. The proposed information is necessary to select the best applicants for the fellowship program. An application form to obtain information about the potential of fellows for successful training in HIV and drug use research is necessary. The information ensures that fellows applying to these programs meet eligibility requirements for research and indicates their potential as future scientists.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 83.

## ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hour
Applicant Scientists .....	Applicant Information .....	45	1	1	45
Scientists .....	Mentor Information .....	45	1	20/60	15
Total .....	.....	90	90	.....	60

Dated: November 27, 2018.

**Genevieve deAlmeida,**

*Project Clearance Liaison, National Institute on Drug Abuse, National Institutes of Health.*

[FR Doc. 2018-27107 Filed 12-13-18; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

[Docket No. USCG-2018-1047]

#### Information Collection Request to Office of Management and Budget; OMB Control Number: 1625-0016

**AGENCY:** Coast Guard, DHS.

**ACTION:** Sixty-day notice requesting comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625-0016, Welding and Hot Work Permits; Posting of Warning Signs; without change. Our ICR describe the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

**DATES:** Comments must reach the Coast Guard on or before February 12, 2019.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number [USCG-2018-1047] to the Coast Guard using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the "Public participation and request for comments" portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

A copy of the ICR is available through the docket on the internet at <https://www.regulations.gov>. Additionally, copies are available from: Commandant (CG-612), ATTN: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE, STOP 7710, Washington, DC 20593-7710.

**FOR FURTHER INFORMATION CONTACT:** Mr. Anthony Smith, Office of Information Management, telephone 202-475-3532, or fax 202-372-8405, for questions on these documents.

#### SUPPLEMENTARY INFORMATION:

#### Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. In response to your comments, we may revise this ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG-2018-1047], and must be received by February 12, 2019.

#### Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to <https://www.regulations.gov> and will include

any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

#### Information Collection Request

**Title:** Welding and Hot Work Permits; Posting of Warning Signs.

**OMB Control Number:** 1625-0016.

**Summary:** This information collection helps to ensure that waterfront facilities and vessels are in compliance with safety standards. A permit must be issued prior to welding or hot work at certain waterfront facilities; and, the posting of warning signs is required on certain facilities.

**Need:** The information is needed to ensure safe operations on certain waterfront facilities and vessels.

**Forms:** CG-4201, Welding and Hot Work.

**Respondents:** Owners and operators of certain waterfront facilities and vessels.

**Frequency:** On occasion.

**Hour Burden Estimate:** The estimated burden has decreased from 593 hours to 434 hours a year due to a decrease in the estimated annual number of responses.

**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: December 11, 2018.

**James D. Roppel,**

*U.S. Coast Guard, Acting Chief, Office of Information Management.*

[FR Doc. 2018-27161 Filed 12-13-18; 8:45 am]

**BILLING CODE 9110-04-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

[Docket No. USCG-2018-0490]

#### Collection of Information Under Review by Office of Management and Budget; OMB Control Number: 1625-0010

**AGENCY:** Coast Guard, DHS.

**ACTION:** Thirty-day notice requesting comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625-0010, Defect/

Noncompliance Report and Campaign update Report; without change. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

**DATES:** Comments must reach the Coast Guard and OIRA on or before January 14, 2019.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number [USCG–2018–0490] to the Coast Guard using the Federal eRulemaking Portal at <https://www.regulations.gov>. Alternatively, you may submit comments to OIRA using one of the following means:

(1) *Email:* [dhsdeskofficer@omb.eop.gov](mailto:dhsdeskofficer@omb.eop.gov).

(2) *Mail:* OIRA, 725 17th Street NW, Washington, DC 20503, attention Desk Officer for the Coast Guard.

A copy of the ICR is available through the docket on the internet at <https://www.regulations.gov>. Additionally, copies are available from: Commandant (CG–612), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE, Stop 7710, Washington, DC 20593–7710.

**FOR FURTHER INFORMATION CONTACT:** Mr. Anthony Smith, Office of Information Management, telephone 202–475–3532, or fax 202–372–8405, for questions on these documents.

#### **SUPPLEMENTARY INFORMATION:**

#### **Public Participation and Request for Comments**

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection. The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents,

including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG–2018–0490], and must be received by January 14, 2019.

#### **Submitting Comments**

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

OIRA posts its decisions on ICRs online at <https://www.reginfo.gov/public/do/PRAMain> after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0010.

#### **Previous Request for Comments**

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (83 FR 29130, June 22, 2018) required by 44 U.S.C. 3506(c)(2). That Notice elicited two comments. One comment was unrelated to this information collection request. The other comment was written by an employee of a recreational boat manufacturer, who provided the Coast Guard with some information on how the reports assist manufacturers in compliance. The commenter said that the two forms, Defect/Noncompliance Report (CG–4917) and the Campaign

Update Report (CG–4918), provide the manufacturer with the tools necessary to report and track defect notifications, as well as recalls. Additionally, the commenter opined that the burden time estimate on this ICR are reasonable and that the forms are helpful. The comment suggested that we can improve the process by allowing online submissions and an email notification system that notifies manufacturers when the forms are coming due. The Coast Guard accepts these forms electronically through email, but does not currently have the capacity to create a monitor an online portal or email notification for these forms. We may reconsider this possibility in the future. Accordingly, no changes have been made to the Collection.

#### **Information Collection Request**

*Title:* Defect/Noncompliance Report and Campaign Update Report.

*OMB Control Number:* 1625–0010.

*Summary:* Manufacturers whose products contain defects that create a substantial risk of personal injury to the public or fail to comply with an applicable Coast Guard safety standard are required to conduct defect notification and recall campaigns in accordance with 46 U.S.C. 4310. Regulations in 33 CFR 179 require manufacturers to submit certain reports to the Coast Guard concerning progress made in notifying owners and making repairs.

*Need:* Under 46 U.S.C. 4310(d) and (e); and 33 CFR 179.13 and 179.15, the manufacturer shall provide the Commandant of the Coast Guard with an initial report consisting of certain information about the defect notification and recall campaign being conducted and follow up reports describing progress. Upon receipt of information from a manufacturer indicating the initiation of a recall, the Recreational Boating Product Assurance Branch assigns a recall campaign number, and sends the manufacturer CG Forms CG–4917 and CG–4918 for supplying the information.

*Forms:* CG–4917, Defect/Noncompliance Report and CG–4918, Campaign Update Report.

*Respondents:* Manufacturers of boats and certain items of “designated” associated equipment (inboard engines, outboard motors, sterndrive engines or an inflatable personal flotation device approved under 46 CFR 160.076).

*Frequency:* Quarterly.

*Hour Burden Estimate:* The estimated burden has decreased from 207 hours to 166.5 hours a year due to the change in the average number of recall campaigns conducted during the last 21 years.



**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: December 11, 2018.

**James D. Roppel,**

*U.S. Coast Guard, Acting Chief, Office of Information Management.*

[FR Doc. 2018-27105 Filed 12-13-18; 8:45 am]

**BILLING CODE 9110-04-P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4407-DR; Docket ID FEMA-2018-0001]

#### California; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of California (FEMA-4407-DR), dated November 12, 2018, and related determinations.

**DATES:** This amendment was issued November 29, 2018.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646-2833.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the incident period for this disaster is closed effective November 25, 2018.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Brock Long,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2018-27152 Filed 12-13-18; 8:45 am]

**BILLING CODE 9111-11-P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[Docket ID FEMA-2018-0002; Internal Agency Docket No. FEMA-B-1869]

#### Proposed Flood Hazard Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

**DATES:** Comments are to be submitted on or before March 14, 2019.

**ADDRESSES:** The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location <https://www.fema.gov/preliminaryfloodhazarddata> and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at <https://msc.fema.gov> for comparison.

You may submit comments, identified by Docket No. FEMA-B-1869, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472,

(202) 646-7659, or (email) [patrick.sacbibit@fema.dhs.gov](mailto:patrick.sacbibit@fema.dhs.gov).

**FOR FURTHER INFORMATION CONTACT:** Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646-7659, or (email) [patrick.sacbibit@fema.dhs.gov](mailto:patrick.sacbibit@fema.dhs.gov); or visit the FEMA Map Information eXchange (FMIX) online at [https://www.floodmaps.fema.gov/fhm/fmx\\_main.html](https://www.floodmaps.fema.gov/fhm/fmx_main.html).

**SUPPLEMENTARY INFORMATION:** FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found



online at [https://www.floodsrp.org/pdfs/srp\\_overview.pdf](https://www.floodsrp.org/pdfs/srp_overview.pdf).

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location <https://www.fema.gov/preliminaryfloodhazarddata> and the respective

Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online

through the FEMA Map Service Center at <https://msc.fema.gov> for comparison. (Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

**David I. Maurstad,**

*Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.*

Community	Community map repository address
<b>Mitchell County, Iowa and Incorporated Areas</b> <b>Project: 16-07-2333S Preliminary Date: May 3, 2018</b>	
City of Carpenter .....	City Hall, 506 William Street, Carpenter, IA 50426.
City of McIntire .....	City Hall, 310 Main Street, McIntire, IA 50455.
City of Mitchell .....	City Hall, 125 East Van Buren Street, Mitchell, IA 50461.
City of Orchard .....	City Hall, 202 Main Street, Orchard, IA 50460.
City of Osage .....	City Hall, 806 Main Street, Osage, IA 50461.
City of Stacyville .....	City Hall, 115 South Broad Street, Stacyville, IA 50476.
City of St. Ansgar .....	City Hall, 111 South Mitchell Street, St. Ansgar, IA 50472.
Unincorporated Areas of Mitchell County .....	Mitchell County Courthouse, 212 South 5th Street, Osage, IA 50461.
<b>Scott County, Minnesota and Incorporated Areas</b> <b>Project: 16-05-4377S Preliminary Dates: July 13, 2018</b>	
City of Belle Plaine .....	City Hall, 218 North Meridian Street, Belle Plaine, MN 56011.
City of Jordan .....	City Hall, 210 East First Street, Jordan, MN 55352.
City of Savage .....	City Hall, 6000 McColl Drive, Savage, MN 55378.
City of Shakopee .....	City Hall, 485 Gorman Street, Shakopee, Minnesota 55379.
Unincorporated Areas of Scott County .....	County Government Center, 200 Fourth Avenue West, Shakopee, MN 55379.
<b>Lucas County, Ohio and Incorporated Areas</b> <b>Project: 13-05-1800S Preliminary Date: August 13, 2018</b>	
City of Oregon .....	City Hall, 5330 Seaman Road, Oregon, OH 43616.
City of Toledo .....	Department of Inspection, One Government Center, Suite 1600, Toledo, OH 43604.
Unincorporated Areas of Lucas County .....	Lucas County Engineer's Office, 1049 South McCord Road, Holland, OH 43528.
Village of Harbor View .....	Village Hall, 327 Lakeview Drive, Harbor View, OH 43434.

[FR Doc. 2018-27149 Filed 12-13-18; 8:45 am]

BILLING CODE 9110-12-P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4407-DR; Docket ID FEMA-2018-0001]

### California; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of California (FEMA-4407-DR), dated November 12, 2018, and related determinations.

**DATES:** The declaration was issued November 12, 2018.

### FOR FURTHER INFORMATION CONTACT:

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646-2833.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated November 12, 2018, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in the State of California resulting from wildfires beginning on November 8, 2018, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of California.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as

you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and assistance for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate subject to completion of Preliminary Damage Assessments (PDAs).

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and Other Needs Assistance will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved

assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, David G. Samaniego, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of California have been designated as adversely affected by this major disaster:

Butte, Los Angeles, and Ventura Counties for Individual Assistance.

Butte, Los Angeles, and Ventura Counties for debris removal and emergency protective measures (Categories A and B), including direct federal assistance, under the Public Assistance program.

All areas within the State of California are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Brock Long,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2018–27153 Filed 12–13–18; 8:45 am]

**BILLING CODE 9111–11–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

[FWS–HQ–R–2018–N119;  
FXGO1664091HCC0–FF09D00000–189]

### International Wildlife Conservation Council; Call for Nominations

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

**ACTION:** Call for nominations.

**SUMMARY:** The Secretary of the Interior (Secretary) seeks nominations for

individuals to be considered to fill two vacancies in the membership of the International Wildlife Conservation Council (Council). The Council advises the Secretary on issues including anti-poaching programs, wildlife trafficking, and efforts to increase awareness of the conservation and economic benefits of United States citizens traveling to foreign nations to engage in hunting.

**DATES:** Written nominations must be postmarked by January 14, 2019.

**ADDRESSES:** Please address and submit your nomination letters via U.S. mail or hand delivery to Mr. Eric Alvarez, Acting Assistant Director–International Affairs; International Wildlife Conservation Council; U.S. Fish and Wildlife Service; 5275 Leesburg Pike, MS:IA; Falls Church, VA 22041–3803.

#### FOR FURTHER INFORMATION CONTACT:

Cade London, Policy Advisor, by email (preferred) at [iwcc@fws.gov](mailto:iwcc@fws.gov), by telephone at 703–358–2584, by U.S. mail (see **ADDRESSES**), or via the Federal Relay Service at 1–800–877–8339.

#### SUPPLEMENTARY INFORMATION:

The Secretary seeks nominations for individuals to be considered to fill two vacancies in the membership of the Council. The Council advises the Secretary on issues including anti-poaching programs, wildlife trafficking, and efforts to increase awareness of the conservation and economic benefits of United States citizens traveling to foreign nations to engage in hunting. The Council conducts its operations in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. Appendix 2). The Council functions solely as an advisory body.

#### Council Duties

For detailed information about the Council's duties or to read the charter, visit the Council's website at [www.fws.gov/iwcc/](http://www.fws.gov/iwcc/).

#### Council Makeup

In addition to ex officio members from the Department of the Interior and the Department of State, the Council should be comprised of no more than 18 discretionary members. Visit the Council website at [www.fws.gov/iwcc/](http://www.fws.gov/iwcc/) for a current list of members.

Nominees must be senior-level representatives of their organizations and/or have the ability to represent their designated constituency. As the charter requires, members will be selected from among, but not limited to, the entities below:

1. Wildlife and habitat conservation/management organizations;

2. U.S. hunters actively engaged in international and/or domestic hunting conservation;

3. The firearms or ammunition manufacturing industry;

4. Archery and/or hunting sports industry; and

5. Tourism, outfitter, and/or guide industries related to international hunting.

You can find more information about terms and length of service in the charter, which is available on the Council's website at: [www.fws.gov/iwcc/](http://www.fws.gov/iwcc/).

#### Nomination Method and Eligibility

Nominations should include a resume that provides contact information and a description of the nominee's qualifications that would enable the Department of the Interior to make an informed decision regarding the candidate's suitability to serve on the Council. Individuals who are federally registered lobbyists are ineligible to serve on all FACA and non-FACA boards, committees, or councils in an individual capacity. The term "individual capacity" refers to individuals who are appointed to exercise their own individual best judgment on behalf of the government, such as when they are designated Special Government Employees, rather than being appointed to represent a particular interest.

**Ariel Alvarez,**

*Acting Assistant Director–International Affairs.*

[FR Doc. 2018–27159 Filed 12–13–18; 8:45 am]

**BILLING CODE 4333–15–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[LLMT926000–19X–L14400000.BJ0000; MO# 4500130365]

### Notice of Proposed Filing of Plats of Survey; Montana

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of proposed official filing.

**SUMMARY:** The plats of surveys for the lands described in this notice are scheduled to be officially filed 30 calendar days after the date of this publication in the BLM Montana State Office, Billings, Montana. The surveys, which were executed at the request of the Director, Rocky Mountain Region, Billings, Montana, are necessary for the management of these lands.

**DATES:** A person or party who wishes to protest this decision must file a notice of protest in time for it to be received in the BLM Montana State Office no later than 30 days after the date of this publication.

**ADDRESSES:** A copy of the plats may be obtained from the Public Room at the BLM Montana State Office, 5001 Southgate Drive, Billings, Montana 59101, upon required payment. The plats may be viewed at this location at no cost.

**FOR FURTHER INFORMATION CONTACT:** Josh Alexander, BLM Chief Cadastral Surveyor for Montana; telephone: (406) 896-5123; email: [jalexand@blm.gov](mailto:jalexand@blm.gov). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at (800) 877-8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** The lands surveyed are:

**Principal Meridian, Montana**

- T. 2 S., R. 42 E.  
secs. 29 and 30.
- T. 26 N., R. 44 E.  
secs. 10 and 15.
- T. 27 N., R. 47 E.  
secs. 21, 28, 29, and 33.
- T. 27 N., R. 50 E.  
secs. 17, 19, and 20.

A person or party who wishes to protest an official filing of a plat of survey identified above must file a written notice of protest with the BLM Chief Cadastral Surveyor for Montana at the address listed in the **ADDRESSES** section of this notice. The notice of protest must identify the plat(s) of survey that the person or party wishes to protest. The notice of protest must be received in the BLM Montana State Office no later than the scheduled date of the proposed official filing for the plat(s) of survey being protested; if received after regular business hours, a notice of protest will be considered filed the next business day. A written statement of reasons in support of the protest, if not filed with the notice of protest, must be filed with the BLM Chief Cadastral Surveyor for Montana within 30 calendar days after the notice of protest is received.

If a notice of protest of the plat(s) of survey is received prior to the scheduled date of official filing or during the 10 calendar day grace period provided in 43 CFR 4.401(a) and the delay in filing is waived, the official filing of the plat(s) of survey identified

in the notice of protest will be stayed pending consideration of the protest. A plat of survey will not be officially filed until the next business day after all timely protests have been dismissed or otherwise resolved, including appeals.

If a notice of protest is received after the scheduled date of official filing and the 10 calendar day grace period provided in 43 CFR 4.401(a), the notice of protest will be untimely, may not be considered, and may be dismissed.

Before including your address, phone number, email address, or other personal identifying information in a notice of protest or statement of reasons, you should be aware that the documents you submit—including your personal identifying information—may be made publicly available in their entirety at any time. While you can ask us to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Authority:** 43 U.S.C. chapter 3.

**Joshua F. Alexander,**  
*Chief Cadastral Surveyor for Montana.*  
[FR Doc. 2018-27066 Filed 12-13-18; 8:45 am]  
**BILLING CODE 4310-DN-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[LLWYD04000-L51010000-ER0000-LVRWK16K1600 16X]

#### Notice of Availability of the Final Environmental Impact Statement for the Riley Ridge to Natrona Project, Wyoming

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** In accordance with the National Environmental Policy Act of 1969 (NEPA), as amended, and the Mineral Leasing Act of 1920, as amended, and the Federal Land Policy and Management Act of 1976 (FLPMA), the Bureau of Land Management (BLM) Rock Springs Field Office has prepared a final Environmental Impact Statement (EIS) for the Riley Ridge to Natrona Project (RRNP or Project) and by this notice announces a 30-day availability period before making any final decisions.

**DATES:** The BLM will not issue a final decision on the proposal for a minimum of 30 days after the date on which the Environmental Protection Agency (EPA) publishes its Notice of Availability (NOA) of the final EIS in the **Federal Register**.

**ADDRESSES:** Copies of the final EIS have been sent to affected Federal, State, and local governments; public libraries in the Project area; and interested parties that previously requested a copy. The final EIS and other supporting documents will be available electronically on the following BLM website: <https://go.usa.gov/xPfkk>.

**FOR FURTHER INFORMATION CONTACT:** Mark Mackiewicz, BLM Senior National Project Manager, telephone 435-636-3616; address 280 Highway 191 North, Rock Springs, Wyoming 82901; email [BLM\\_WY\\_RRNP@blm.gov](mailto:BLM_WY_RRNP@blm.gov).

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1-800-877-8339 to speak with Mr. Mackiewicz during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question for the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** The BLM is responding to four applications for right-of-way grants submitted by Denbury Green Pipeline-Riley Ridge, LLC (Denbury) and PacifiCorp, doing business as Rocky Mountain Power (collectively referred to as the Applicant), to the BLM for the Project. Denbury submitted an "Application for Transportation and Utility Systems and Facilities on Federal Lands" (Standard Form 299) to the BLM for two underground pipeline projects: (1) The Riley Ridge Carbon Dioxide (CO<sub>2</sub>) Pipeline Project (WYW-167867) and (2) the Bairoil to Natrona CO<sub>2</sub> Pipeline Project (WYW-168290). In addition, Denbury has proposed two hydrogen sulfide (H<sub>2</sub>S) injection wells (WYW-181373) to be sited near the proposed Riley Ridge Sweetening Plant, which is included in the Riley Ridge CO<sub>2</sub> Pipeline Project application. PacifiCorp submitted an application for a right-of-way for a 230-kilovolt (kV) transmission line (WYW-185369) to supply energy to the Riley Ridge Sweetening Plant. The applications for right-of-way grants for Denbury's Proposed Action were submitted to the BLM on February 19, 2013 (Denbury), and January 25, 2016 (PacifiCorp); the proposal for the injection wells was submitted to the BLM on September 12, 2013. Collectively, the Project consists of the following components (as proposed):

- An underground non-gaseous H<sub>2</sub>S/CO<sub>2</sub> pipeline from the existing Riley Ridge Treating Plant (a methane and helium recovery facility) to the proposed Riley Ridge Sweetening Plant, consisting of 31 miles of 16-inch-diameter pipe within Sublette County;

- A CO<sub>2</sub> underground pipeline from the proposed Riley Ridge Sweetening Plant to the Bairoil Interconnect, consisting of 129 miles of 24-inch-diameter pipe, and continuing from the interconnect another 84 miles to the terminus at the Natrona Hub within Natrona County;

- The 4.3-acre proposed Riley Ridge Sweetening Plant, located on BLM-administered lands, constructed and operated to separate the CO<sub>2</sub> from the H<sub>2</sub>S; the H<sub>2</sub>S would be reinjected into deep geologic formations via two proposed injection wells;

- An approximately 1-mile-long 230 kV overhead transmission line that would bring power to the Riley Ridge Sweetening Plant from an existing 230 kV transmission line; and

- Ancillary facilities, such as roads, valves, flowlines, etc.

The purpose of this Federal action is to respond to the Applicant's right-of-way applications for construction, operation, and maintenance of the Project infrastructure across Federal land. Section 28 of the Mineral Leasing Act of 1920 provides authority for BLM to issue right-of-way grants for pipeline purposes, and FLPMA provides the BLM with discretionary authority to grant use of public lands, including rights-of-way, taking into consideration impacts on natural, cultural, and historical resources.

The BLM is the lead Federal agency for this EIS as defined at 40 CFR part 1501.5. Cooperating agencies include U.S. Fish and Wildlife Service, National Park Service, U.S. Army Corps of Engineers; the State of Wyoming; Fremont, Lincoln, Sublette, Sweetwater, and Natrona counties in Wyoming; and the Natrona County, Popo Agie, Sublette County, and Sweetwater County conservation districts in Wyoming.

In accordance with NEPA, the BLM prepared an EIS analyzing the right-of-way applications using an interdisciplinary approach to consider a variety of resource issues and concerns identified during internal, interagency, and public scoping. The BLM published a NOA of the Draft EIS for public review and comment in the **Federal Register** on March 23, 2018 (83 FR 12810). The EPA published a NOA of the Draft EIS for public review and comment in the **Federal Register** on the same day, which initiated a 45-day public review period.

To allow the public an opportunity to review information associated with the Project and comment on the Draft EIS, the BLM hosted four public meetings in April 2018. The public meetings on the

Draft EIS were held from 4 to 7 p.m. at the following locations:

- April 9—Ramada Plaza Riverside, 300 West F Street, Casper, Wyoming
- April 10—Rodeway Inn/Pronghorn Lodge, 150 East Main Street, Lander, Wyoming
- April 11—Marbleton Town Hall, 10700 Highway 189, Marbleton, Wyoming
- April 12—BLM High Desert District Office, 280 Highway 191 North, Rock Springs, Wyoming

During the 45-day comment period, 19 submittals offering comments on the Draft EIS were received from various federal, State, and local agencies; various special interest groups; corporations; and public citizens. This included 14 letters, 3 comment forms, and 2 emails with comments submitted at the public open house meetings and mailed to the BLM. In compliance with the requirements of the Council on Environmental Quality regulations for implementing NEPA, all substantive comments received were assessed and a response provided. Of the 19 comment submittals received, 70 comments were identified as substantive according to BLM guidelines.

The BLM responded to comments received on the draft EIS in the final EIS. After the final waiting period, and based on the environmental analysis in the final EIS, the BLM will prepare a Record of Decision documenting the BLM Authorized Officer's decision.

**Authority:** 40 CFR 1501.7 and 43 CFR 1610.2.

**Tim Wakefield,**

*High Desert District Manager.*

[FR Doc. 2018–27154 Filed 12–13–18; 8:45 am]

**BILLING CODE 4310–22–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Ocean Energy Management [Docket No. BOEM–2018–0054]

#### Outer Continental Shelf (OCS), Alaska Region (AK), Beaufort Sea Program Area, Proposed 2019 Beaufort Sea Oil and Gas Lease Sale

**AGENCY:** Bureau of Ocean Energy Management, Interior.

**ACTION:** Notice of intent to prepare an environmental impact statement, announce the area identified for leasing, extension of comment period and prescheduling of public scoping meetings.

**SUMMARY:** On November 16, 2018, consistent with the regulations implementing the National

Environmental Policy Act (NEPA), the Bureau of Ocean Energy Management (BOEM) announced its intent, in the **Federal Register** (83 FR 57749), to prepare an Environmental Impact Statement (EIS) for the proposed 2019 Beaufort Sea Lease Sale in the Beaufort Sea Planning Area. Because of earthquakes in Alaska, BOEM has rescheduled some of its scoping meetings and extended the comment period.

#### DATES:

**Comments:** All interested parties, including Federal, State, Tribal, and local governments, and the general public, may submit written comments by January 4, 2019, on the scope of the 2019 Beaufort Sea Lease Sale EIS, significant issues, reasonable alternatives, potential mitigation measures, and the foreseeable types of oil and gas activities in the proposed lease sale area.

Comments may be made on-line. Navigate to <http://www.regulations.gov> and search for Docket BOEM–2018–0054, or “Oil and Gas Lease Sales: Alaska Outer Continental Shelf; 2019 Beaufort Sea Lease Sale”, and click on the “Comment Now!” button. Enter your information and comment, and then click “Submit.” 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.

#### ADDRESSES:

**Scoping Meetings:** Pursuant to the regulations implementing the procedural provisions of NEPA, BOEM will hold public scoping meetings. The purpose of these meetings is to solicit comments on the scope of the 2019 Beaufort Sea Lease Sale EIS. The meeting in Anchorage, Alaska, on December 6, 2018, was held as scheduled. The remaining meetings will all start at 7:00 p.m. and conclude at 9:00 p.m., and are rescheduled as follows:

- December 17, 2018, Inupiat Heritage Center, Utqiagvik, Alaska;
- December 18, 2018, Kisk Community Center, Nuiqsut, Alaska; and
- December 19, 2018, Community Center, Kaktovik, Alaska.

**FOR FURTHER INFORMATION CONTACT:** For information on the 2019 Beaufort Sea

Lease Sale EIS or the submission of comments, please contact Sharon Randall, Chief of Environmental Analysis Section, BOEM, Alaska OCS Region, 3801 Centerpoint Drive, Suite 500, Anchorage, AK 99503, (907) 334-5200.

**Authority:** This notice of intent is published pursuant to the regulations at 40 CFR 1501.7 implementing the provisions of NEPA.

Dated: December 11, 2018.

**Walter D. Cruickshank,**

*Acting Director, Bureau of Ocean Energy Management.*

[FR Doc. 2018-27176 Filed 12-13-18; 8:45 am]

**BILLING CODE 4310-MR-P**

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1140]

### Certain Multi-Stage Fuel Vapor Canister Systems and Activated Carbon Components Thereof; Institution of Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on November 8, 2018, under section 337 of the Tariff Act of 1930, as amended, on behalf of Ingevity Corp. of North Charleston, South Carolina and Ingevity South Carolina, LLC of North Charleston, South Carolina. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain multi-stage fuel vapor canister systems and activated carbon components thereof by reason of infringement of certain claims of U.S. Patent No. RE38,844 ("the '844 patent"). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute.

The complainants request that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

**ADDRESSES:** The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Room 112, Washington, DC 20436, telephone (202) 205-2000. Hearing impaired

individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205-2000. General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>.

#### FOR FURTHER INFORMATION CONTACT:

Katherine Hiner, Office of the Secretary, Docket Services Division, U.S. International Trade Commission, telephone (202) 205-1802.

#### SUPPLEMENTARY INFORMATION:

**Authority:** The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2018).

**Scope of Investigation:** Having considered the complaint, the U.S. International Trade Commission, on December 7, 2018, *Ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1-5, 8, 11, 13, 15, 18, 19, 21, 24, 28, 31, 33, 36, 38, 40, 43, 45, 48, 50, and 52 of the '844 patent; and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is "multi-stage fuel vapor canister systems manufactured by the MAHLE Respondents that include low-incremental adsorption capacity ('IAC') activated carbon components and the low-IAC activated carbon components thereof, such as MPAC-1.";

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are: Ingevity Corp., 5255 Virginia Avenue, North Charleston, SC 29406.

Ingevity South Carolina, LLC, 5255 Virginia Avenue, North Charleston, SC 29406.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

MAHLE Filter Systems North America, Inc., 906 Butler Drive, Murfreesboro, TN 37127.

MAHLE Filter Systems Japan Corp., 591 Shimo-akasaki, Kawagoe, Saitama 350-1155, Japan.

MAHLE Sistemas de Filtración de México S.A. de C.V., Libramiento Arco Vial Poniente km. 4.2, 66350 Monterrey, Nuevo Leon, Mexico.

MAHLE Filter Systems Canada, ULC, 16 Industrial Park Road, Tilbury, ON NOP 2L0, Canada.

Kuraray Co., Ltd., Ote Center Building, 1-1-3, Otemachi, Chiyoda-ku, Tokyo 100-8115, Japan.

Kuraray America, Inc., 2625 Bay Area Boulevard, Suite 600, Houston, TX 77058.

Nagamine Manufacturing Co., Ltd., 1725-26, Kishinoue, Manno-town, Nakatado-Gun, Kagawa-pref., 766-0026, Japan.

The Office of Unfair Import Investigations will not be named as a party to this investigation.

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination

and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: December 10, 2018.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2018-27071 Filed 12-13-18; 8:45 am]

BILLING CODE 7020-02-P

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-1279 (Final)  
(Second Remand)]

### Hydrofluorocarbon Blends and Components From China

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice of remand proceedings.

**SUMMARY:** The U.S. International Trade Commission (“Commission”) hereby gives notice of the court-ordered remand of its final determination in the antidumping duty investigation of hydrofluorocarbon blends and components (“HFC”) from China. For further information concerning the conduct of these remand proceedings and rules of general application, consult the Commission’s Rules of Practice and Procedure.

**DATES:** December 6, 2018.

#### FOR FURTHER INFORMATION CONTACT:

Joanna Lo (202-205-1888), Office of Investigations, or P.V. Gallagher (202-205-3152), Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission’s TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>). The public record of Investigation No. 731-TA-1279 (Final) may be viewed on the Commission’s electronic docket (EDIS) at <http://edis.usitc.gov>.

#### SUPPLEMENTARY INFORMATION:

**Background.**—On November 5, 2018, the U.S. Court of International Trade, per Judge Leo M. Gordon, issued a second opinion in *Arkema, Inc. v. United States*, Court No. 16-00179. In

this second opinion, the CIT remanded to the agency two issues concerning the Commission’s like product determination in *Hydrofluorocarbon (“HFC”) Blends and Components from China*, Inv. No. 731-TA-1279 (Final), USITC Pub. 4629 (Aug. 2016). In the investigation, the Commission applied its five-factor finished/semi-finished product analysis and determined that there were two domestic like products, one comprised of HFC components and one comprised of HFC blends. The Commission then determined that the domestic industry producing HFC blends was materially injured by reason of subject imports of HFC blends, whereas the domestic industry producing HFC components was not materially injured or threatened with material injury by reason of subject imports of HFC components. Petitioners appealed the decisions to the CIT, challenging the Commission’s determination that there were two domestic like products consisting of HFC blends and HFC components. In its first opinion, the CIT remanded two issues to the Commission and affirmed all other aspects of the Commission’s domestic like product determination. *See Arkema, Inc. v. United States*, Court No. 16-00179, 42 CIT \_\_\_, 290 F.Supp.3d 1363 (2018). The Commission filed its remand with the Court on May 5, 2018. In its second opinion, the CIT held that the Commission’s domestic like product determination remained deficient regarding the same two issues and again remanded these two issues to the Commission for reconsideration and explanation. *Arkema, Inc. v. United States*, Court No. 16-00179, Slip. Op. 18-153 (Ct. Int’l Trade November 5, 2018).

**Participation in the proceeding.**—Only those persons who were interested parties that participated in the investigations (*i.e.*, persons listed on the Commission Secretary’s service list) and also parties to the appeal may participate in the remand proceedings. Such persons need not make any additional notice of appearances or applications with the Commission to participate in the remand proceedings, unless they are adding new individuals to the list of persons entitled to receive business proprietary information (“BPI”) under administrative protective order. BPI referred to during the remand proceedings will be governed, as appropriate, by the administrative protective order issued in the investigation. The Secretary will maintain a service list containing the names and addresses of all persons or

their representatives who are parties to the remand proceedings, and the Secretary will maintain a separate list of those authorized to receive BPI under the administrative protective order during the remand proceedings.

**Written Submissions.**—The Commission is reopening the record in these proceedings for the limited purpose of issuing a short supplemental questionnaire to U.S. producers and blenders. The Commission is not otherwise reopening the record for the collection of new factual information. The Commission will make available any new factual information obtained during the remand proceedings not already served to parties in the investigations (as identified by the public or BPI service list). The Commission will permit the parties to file written comments on any new factual information obtained during the remand proceedings and on how the Commission could best comply with the CIT’s remand instructions.

The comments must be based only on the information in the Commission’s record, including any new information collected in these remand proceedings. The Commission will reject submissions containing additional factual information or arguments pertaining to issues other than those on which the CIT has remanded this matter. The deadline for filing comments is January 7, 2019. Comments shall be limited to no more than ten (10) double-spaced and single-sided pages of textual material.

Parties are advised to consult with the Commission’s Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subpart A (19 CFR part 207) for provisions of general applicability concerning written submissions to the Commission. All written submissions must conform to the provisions of section 201.8 of the Commission’s rules; any submissions that contain BPI must also conform to the requirements of sections 201.6, 207.3, and 207.7 of the Commission’s rules. The Commission’s *Handbook on E-Filing*, available on the Commission’s website at <http://edis.usitc.gov>, elaborates upon the Commission’s rules with respect to electronic filing.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission’s rules, will not be accepted unless good cause is shown for accepting such submissions or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

By order of the Commission.

Issued: December 10, 2018.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2018-27088 Filed 12-13-18; 8:45 am]

BILLING CODE 7020-02-P

## INTERNATIONAL TRADE COMMISSION

### Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Dental and Orthodontic Scanners and Software, DN 3357*; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

**FOR FURTHER INFORMATION CONTACT:** Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at <https://edis.usitc.gov>, and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-2000.

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

**SUPPLEMENTARY INFORMATION:** The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Align Technology, Inc., on December 10, 2018. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain dental and orthodontic scanners and software. The complaint names as respondents: 3Shape A/S of Denmark; 3Shape, Inc. of Warren, NJ; and 3Shape Trios A/S of Denmark. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders and impose a bond during the 60-day review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

- (i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;
- (ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;
- (iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;
- (iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and
- (v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days

after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues should be filed no later than by close of business nine calendar days after the date of publication of this notice in the **Federal Register**. Complainant may file a reply to any written submission no later than the date on which complainant's reply would be due under § 210.8(c)(2) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(c)(2)).

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to § 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number ("Docket No. 3357") in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, Electronic Filing Procedures.<sup>1</sup>) Persons with questions regarding filing should contact the Secretary (202-205-2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the

<sup>1</sup> Handbook for Electronic Filing Procedures: [https://www.usitc.gov/documents/handbook\\_on\\_filing\\_procedures.pdf](https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf).



programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,<sup>2</sup> solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.<sup>3</sup>

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: December 10, 2018.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2018-27087 Filed 12-13-18; 8:45 am]

BILLING CODE 7020-02-P

## DEPARTMENT OF JUSTICE

### Antitrust Division

#### **United States v. James Dolan; Proposed Final Judgment and Competitive Impact Statement**

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America v. James Dolan*, Civil Action No. 1:18-cv-02858. On December 6, 2018, the United States filed a Complaint alleging that James Dolan violated the notice and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. 18a, with respect to his acquisition of voting securities of Madison Square Garden Company. The proposed Final Judgment, filed at the same time as the Complaint, requires James Dolan to pay a civil penalty of \$609,810.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection on the Antitrust Division's website at <http://www.justice.gov/atr> and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

<sup>2</sup> All contract personnel will sign appropriate nondisclosure agreements.

<sup>3</sup> Electronic Document Information System (EDIS): <https://edis.usitc.gov>.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division's website, filed with the Court, and, under certain circumstances, published in the **Federal Register**. Comments should be directed to Roberta S. Baruch, Special Attorney, United States, c/o Federal Trade Commission, 600 Pennsylvania Avenue NW, CC-8416, Washington, DC 20580 (telephone: 202-326-2861; e-mail: [rbaruch@ftc.gov](mailto:rbaruch@ftc.gov)).

**Patricia A. Brink,**

*Director of Civil Enforcement.*

#### **United States District Court for the District of Columbia**

*United States of America, c/o Department of Justice, Washington, D.C. 20530, Plaintiff, v. James L. Dolan, c/o The Madison Square Garden Company, Two Penn Plaza, New York, NY 10121, Defendant.*

Civil Action No. 1:18-cv-02858

#### **COMPLAINT FOR CIVIL PENALTIES FOR FAILURE TO COMPLY WITH THE PREMERGER REPORTING AND WAITING REQUIREMENTS OF THE HART-SCOTT RODINO ACT**

The United States of America, Plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States and at the request of the Federal Trade Commission, brings this civil antitrust action to obtain monetary relief in the form of civil penalties against Defendant James L. Dolan ("Dolan"). Plaintiff alleges as follows:

#### **NATURE OF THE ACTION**

1. Dolan violated the notice and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. § 18a ("HSR Act" or "Act"), with respect to the acquisition of voting securities of the Madison Square Garden Company ("MSG") in 2017.

#### **JURISDICTION AND VENUE**

2. This Court has jurisdiction over the subject matter of this action pursuant to Section 7A(g) of the Clayton Act, 15 U.S.C. § 18a(g), and pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355 and over the Defendant by virtue of Defendant's consent, in the Stipulation relating hereto, to the maintenance of this action and entry of the Final Judgment in this District.

3. Venue is properly based in this District by virtue of Defendant's consent, in the Stipulation relating hereto, to the maintenance of this action

and entry of the Final Judgment in this District.

#### **THE DEFENDANT**

4. Defendant Dolan is a natural person with his principal office and place of business at Two Penn Plaza, New York, NY 10121. Dolan is engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. § 12, and Section 7A(a)(1) of the Clayton Act, 15 U.S.C. § 18a(a)(1). At all times relevant to this complaint, Dolan had sales or assets in excess of \$161.5 million.

#### **OTHER ENTITY**

5. MSG is a corporation organized under the laws of Delaware with its principal place of business at Two Penn Plaza, New York, NY 10121. MSG is engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. § 12, and Section 7A(a)(1) of the Clayton Act, 15 U.S.C. § 18a(a)(1). At all times relevant to this complaint, MSG had sales or assets in excess of \$16.6 million.

#### **THE HART-SCOTT-RODINO ACT AND RULES**

6. The HSR Act requires certain acquiring persons and certain persons whose voting securities or assets are acquired to file notifications with the Department of Justice and the Federal Trade Commission (collectively, the "federal antitrust agencies") and to observe a waiting period before consummating certain acquisitions of voting securities or assets. 15 U.S.C. § 18a(a) and (b). These notification and waiting period requirements apply to acquisitions that meet the HSR Act's thresholds, which have been adjusted annually since 2004. The size of transaction threshold is \$50 million, as adjusted (\$80.8 million for most of 2017). In addition, there is a separate filing requirement for transactions in which the acquirer will hold voting securities in excess of \$100 million, as adjusted (\$161.5 million in 2017), and for transactions in which the acquirer will hold voting securities in excess of \$500 million, as adjusted (\$807.5 million in 2017). With respect to the size of person thresholds, the HSR Act requires one person involved in the transaction to have sales or assets in excess of \$10 million, as adjusted (\$16.6 million in 2017), and the other person to have sales or assets in excess of \$100 million, as adjusted (\$161.5 million in 2017).

7. The HSR Act's notification and waiting period requirements are



intended to give the federal antitrust agencies prior notice of, and information about, proposed transactions. The waiting period is also intended to provide the federal antitrust agencies with an opportunity to investigate a proposed transaction and to determine whether to seek an injunction to prevent the consummation of a transaction that may violate the antitrust laws.

8. Pursuant to Section (d)(2) of the HSR Act, 15 U.S.C. § 18a(d)(2), rules were promulgated to carry out the purposes of the HSR Act. 16 C.F.R. §§ 801–03 (“HSR Rules”). The HSR Rules, among other things, define terms contained in the HSR Act.

9. Pursuant to section 801.13(a)(1) of the HSR Rules, 16 C.F.R. § 801.13(a)(1), “all voting securities of [an] issuer which will be held by the acquiring person after the consummation of an acquisition”—including any held before the acquisition—are deemed held “as a result of” the acquisition at issue.

10. Pursuant to sections 801.13(a)(2) and 801.10(c)(1) of the HSR Rules, 16 C.F.R. § 801.13(a)(2) and § 801.10(c)(1), the value of voting securities already held is the market price, defined to be the lowest closing price within 45 days prior to the subsequent acquisition.

11. Section 802.21 of the HSR Rules, 16 C.F.R. § 802.21, provides that once a person has filed under the HSR Act and the waiting period has expired, the person can acquire additional voting securities of the issuer without making a new filing for five years from the expiration of the waiting period, so long as the holdings do not exceed a higher threshold than was indicated in the filing.

12. Section 7A(g)(1) of the Clayton Act, 15 U.S.C. § 18a(g)(1), provides that any person, or any officer, director, or partner thereof, who fails to comply with any provision of the HSR Act is liable to the United States for a civil penalty for each day during which such person is in violation. Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. 114–74, § 701 (further amending the Federal Civil Penalties Inflation Adjustment Act of 1990), and Federal Trade Commission Rule 1.98, 16 C.F.R. § 1.98, 83 Fed. Reg. 2902 (January 22, 2018), the maximum amount of civil penalty is currently \$41,484 per day.

#### *DEFENDANT’S PRIOR VIOLATION OF THE HSR ACT*

13. On March 10, 2010, Dolan acquired voting securities of Cablevision Systems Corporation (“CVC”) that resulted in holdings exceeding the adjusted \$50 million threshold then in

effect under the HSR Act. Although he was required to do so, Dolan did not file under the HSR Act prior to acquiring CVC voting securities on March 10, 2010.

14. Subsequently, Dolan made additional acquisitions of CVC voting securities such that on November 30, 2010 his holdings exceeded the adjusted \$100 million threshold then in effect under the HSR Act. Although he was required to do so, Dolan did not file under the HSR Act prior to making the acquisition of CVC voting securities on November 30, 2010.

15. On February 24, 2012, Dolan made a corrective filing under the HSR Act for the acquisitions of CVC voting securities. In a letter accompanying the corrective filing, Dolan acknowledged that the transactions were reportable under the HSR Act, but asserted that the failure to file and observe the waiting period was inadvertent.

16. On May 4, 2012, the Premerger Notification Office of the Federal Trade Commission sent a letter to Dolan indicating that it would not recommend a civil penalty action regarding the March 10, 2010, and November 30, 2010, CVC acquisitions. The letter advised, however, that Dolan “still must bear responsibility for compliance with the Act” and was “accountable for instituting an effective program to ensure full compliance with the Act’s requirements.”

#### *DEFENDANT’S VIOLATION OF THE HSR ACT*

17. Dolan is the Executive Chairman and a Director of MSG and, as a result of holding these positions, frequently receives restricted stock units (“RSUs”) as a part of his compensation package. On August 16, 2016, due to vesting RSUs, Dolan filed an HSR Notification for an acquisition of MSG voting securities that would result in holdings exceeding the \$50 million threshold as adjusted. Early termination of the HSR Act’s waiting period was granted on this filing on September 6, 2016, and Dolan completed the acquisition three days later. Dolan was permitted under the HSR Act to acquire additional voting securities of MSG without making another HSR Act filing so long as he did not exceed the \$100 million threshold, as adjusted. As of February 27, 2017, the adjusted \$100 million threshold was \$161.5 million.

18. On September 11, 2017, Dolan acquired 591 shares of MSG due to vesting RSUs. As a result of this acquisition, Dolan held voting securities of MSG valued in excess of the \$161.5 million threshold then in effect.

19. Although required to do so, Dolan did not file under the HSR Act or observe the HSR Act’s waiting period prior to completing the September 11, 2017, transaction.

20. On November 24, 2017, Dolan made a corrective filing and the waiting period expired on December 26, 2017. Dolan was in continuous violation of the HSR Act from September 11, 2017, when he acquired the MSG voting securities valued in excess of the HSR Act’s then applicable \$100 million filing threshold, as adjusted (\$161.5 million), through December 26, 2017, when the waiting period expired on his corrective filing.

#### *REQUESTED RELIEF*

WHEREFORE, Plaintiff requests:

a. That the Court adjudge and decree that Defendant’s acquisition of MSG voting securities on September 11, 2017, was a violation of the HSR Act, 15 U.S.C. § 18a; and that Defendant was in violation of the HSR Act each day from September 11, 2017, through December 26, 2017;

b. That the Court order Defendant to pay to the United States an appropriate civil penalty as provided by the HSR Act, 15 U.S.C. § 18a(g)(1), and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. 114–74, § 701 (further amending the Federal Civil Penalties Inflation Adjustment Act of 1990), and Federal Trade Commission Rule 1.98, 16 C.F.R. § 1.98, 83 Fed. Reg. 2902 (January 22, 2018);

c. That the Court order such other and further relief as the Court may deem just and proper; and

d. That the Court award Plaintiff its costs of this suit.

Dated:

FOR THE PLAINTIFF UNITED STATES OF AMERICA:

Makin Delrahim,  
D.C. Bar No. 457795,  
*Assistant Attorney General*,  
Department of Justice,  
Antitrust Division,  
Washington, D.C. 20530

Roberta S. Baruch,  
D.C. Bar No. 269266,  
*Special Attorney*.

Kenneth A. Libby,  
*Special Attorney*.

Jennifer Lee,  
*Special Attorney*,  
Federal Trade Commission,

Washington, D.C. 20530,  
(202) 326-2694.

**United States District Court for the  
District of Columbia**

*United States of America*, Plaintiff, v.  
*James L. Dolan*, Defendant.

Civil Action No. 1:18-cv-02858

**[PROPOSED] FINAL JUDGMENT**

Plaintiff, the United States of America, having commenced this action by filing its Complaint herein for violation of Section 7A of the Clayton Act, 15 U.S.C. § 18a, commonly known as the Hart-Scott-Rodino Antitrust Improvements Act of 1976, and Plaintiff and Defendant James L. Dolan, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by the Defendant with respect to any such issue:

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon the consent of the parties hereto, it is hereby

ORDERED, ADJUDGED, AND  
DECREED:

The Court has jurisdiction of the subject matter of this action and of the Plaintiff and the Defendant. The Complaint states a claim upon which relief can be granted against the Defendant under Section 7A of the Clayton Act, 15 U.S.C. § 18a.

**II.**

Judgment is hereby entered in this matter in favor of Plaintiff and against Defendant, and, pursuant to Section 7A(g)(1) of the Clayton Act, 15 U.S.C. § 18a(g)(1), the Debt Collection Improvement Act of 1996, Pub. L. 104-134 § 31001(s) (amending the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461), the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. 114-74 § 701 (further amending the Federal Civil Penalties Inflation Adjustment Act of 1990), and Federal Trade Commission Rule 1.98, 16 C.F.R. § 1.98, 82 Fed. Reg. 8135 (January 24, 2017), Defendant is hereby ordered to pay a civil penalty in the amount of six hundred nine thousand eight hundred and ten dollars (\$609,810). Payment of the civil penalty ordered hereby shall be made by wire transfer of funds or cashier's check. If the payment is made by wire transfer, Defendant shall contact Janie Ingalls of the Antitrust Division's Antitrust Documents Group at (202) 514-2481 for

instructions before making the transfer. If the payment is made by cashier's check, the check shall be made payable to the United States Department of Justice and delivered to: Janie Ingalls, United States Department of Justice, Antitrust Division, Antitrust Documents Group, 450 5th Street, NW, Suite 1024, Washington, D.C. 20530

Defendant shall pay the full amount of the civil penalty within thirty (30) days of entry of this Final Judgment. In the event of a default or delay in payment, interest at the rate of eighteen (18) percent per annum shall accrue thereon from the date of the default or delay to the date of payment.

**III.**

Each party shall bear its own costs of this action.

**IV.**

This Final Judgment shall expire upon payment in full by the Defendant of the civil penalty required by Section II of this Final Judgment.

**V.**

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest. Dated:

United States District Judge

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

*United States of America*, Plaintiff, v. *James L. Dolan*, Defendant.

Civil Action No. 1:18-cv-02858

**COMPETITIVE IMPACT STATEMENT**

Plaintiff United States of America ("United States"), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16(b)-(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

**I. NATURE AND PURPOSE OF THE  
PROCEEDING**

On December 6, 2018, the United States filed a Complaint against Defendant James L. Dolan ("Dolan"),

related to Dolan's acquisitions of voting securities of the Madison Square Garden Company ("MSG") in September 2017. The Complaint alleges that Dolan violated Section 7A of the Clayton Act, 15 U.S.C. § 18a, commonly known as the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "HSR Act"). The HSR Act provides that "no person shall acquire, directly or indirectly, any voting securities of any person" exceeding certain thresholds until that person has filed pre-acquisition notification and report forms with the Department of Justice and the Federal Trade Commission (collectively, the "federal antitrust agencies" or "agencies") and the post-filing waiting period has expired. 15 U.S.C. § 18a(a). A key purpose of the notification and waiting period requirements is to protect consumers and competition from potentially anticompetitive transactions by providing the agencies an opportunity to conduct an antitrust review of proposed transactions before they are consummated.

The Complaint alleges that Dolan acquired voting securities of MSG in excess of then-applicable statutory threshold (\$161.5 million at the time of acquisition) without making the required pre-acquisition HSR Act filings with the agencies and without observing the waiting period, and that Dolan and MSG met the applicable statutory size of person thresholds.

At the same time the Complaint was filed in the present action, the United States also filed a Stipulation and proposed Final Judgment that eliminates the need for a trial in this case. The proposed Final Judgment is designed to address the violation alleged in the Complaint and deter Dolan's HSR Act violations. Under the proposed Final Judgment, Dolan must pay a civil penalty to the United States in the amount of \$609,810.

The United States and the Defendant have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless the United States first withdraws its consent. Entry of the proposed Final Judgment would terminate this case, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and punish violations thereof.

**II. DESCRIPTION OF THE EVENTS  
GIVING RISE TO THE ALLEGED  
VIOLATION**

Dolan is the Executive Chairman and a Director of MSG and an investor. At all times relevant to the Complaint,

Dolan had sales or assets in excess of \$161.5 million. At all times relevant to the Complaint, MSG had sales or assets in excess of \$16.6 million.

In his roles as Executive Chairman and Director of MSG, Dolan frequently receives restricted stock units ("RSUs") as a part of his compensation package. On August 16, 2016, due to the imminent vesting of RSUs, Dolan made an HSR filing for an acquisition of MSG voting securities that would result in holdings exceeding the adjusted \$50 million threshold then in effect. The Premerger Notification Office granted early termination on this filing on September 6, 2016, and Dolan completed the acquisition three days later. For a period of five years, Dolan was permitted under the HSR Act to acquire additional voting securities of MSG without making another HSR Act filing so long as he did not exceed the \$100 million threshold, as adjusted. As of February 27, 2017, the adjusted \$100 million threshold was \$161.5 million.

On September 11, 2017, Dolan acquired 591 shares of MSG due to vesting RSUs. As a result of this acquisition, Dolan held voting securities of MSG valued in excess of the \$161.5 million threshold then in effect. Although he was required to do so, Dolan did not file under the HSR Act or observe the HSR Act's waiting period prior to completing the September 11, 2017, transaction.

Dolan made a corrective HSR Act filing on November 27, 2017, after learning that this acquisition was subject to the HSR Act's requirements and that he was obligated to file. The waiting period for that corrective filing expired on December 26, 2017.

The Complaint further alleges that Dolan's September 2017 HSR Act violation was not the first time Dolan had failed to observe the HSR Act's notification and waiting period requirements. On March 10, 2010, Dolan acquired voting securities of Cablevision Systems Corporation ("CVC") that resulted in holdings exceeding the adjusted \$50 million threshold then in effect under the HSR Act. Although he was required to do so, Dolan did not file under the HSR Act prior to acquiring CVC voting securities on March 10, 2010. Subsequently, Dolan made additional acquisitions of CVC voting securities such that on November 30, 2010 his holdings exceeded the adjusted \$100 million threshold then in effect under the HSR Act. Although he was required to do so, Dolan did not file under the HSR Act prior to making the acquisition of CVC voting securities on November 30, 2010. On February 24, 2012, Dolan made a corrective filing

under the HSR Act for the acquisitions of CVC voting securities, and explained in a letter accompanying the corrective filing that his failure to file was inadvertent. On May 4, 2012, the Premerger Notification Office of the Federal Trade Commission notified Dolan by letter that it would not recommend a civil penalty for the violations, but advised Dolan that he was "accountable for instituting an effective program to ensure full compliance with the Act's requirements."

### III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The proposed Final Judgment imposes a \$609,810 civil penalty designed to address the violation alleged in the Complaint and deter the Defendant and others from violating the HSR Act. The United States adjusted the penalty downward from the maximum permitted under the HSR Act because the violation was inadvertent, the Defendant promptly self-reported the violation after discovery, and the Defendant is willing to resolve the matter by consent decree and avoid prolonged investigation and litigation. The relief will have a beneficial effect on competition because the agencies will be properly notified of future acquisitions, in accordance with the law. At the same time, the penalty will not have any adverse effect on competition.

### IV. REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

There is no private antitrust action for HSR Act violations; therefore, entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust action.

### V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

The United States and the Defendant have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the

*Federal Register*, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the U.S. Department of Justice, Antitrust Division's internet website and, under certain circumstances, published in the *Federal Register*. Written comments should be submitted to: Roberta S. Baruch, Special Attorney, United States, c/o Federal Trade Commission, 600 Pennsylvania Avenue, NW, CC-8407, Washington, DC 20580, Email: [rbaruch@ftc.gov](mailto:rbaruch@ftc.gov)

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

### VI. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against the Defendant. The United States is satisfied, however, that the proposed relief is an appropriate remedy in this matter. Given the facts of this case, including the Defendant's self-reporting of the violation and willingness to promptly settle this matter, the United States is satisfied that the proposed civil penalty is sufficient to address the violation alleged in the Complaint and to deter violations by similarly situated entities in the future, without the time, expense, and uncertainty of a full trial on the merits.

### VII. STANDARD OF REVIEW UNDER THE APPA FOR THE PROPOSED FINAL JUDGMENT

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a 60-day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." 15 U.S.C. § 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

(A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration

of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial. 15 U.S.C. § 16(e)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to "broad discretion to settle with the defendant within the reaches of the public interest." *United States v. Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see generally United States v. SBC Commc'ns, Inc.*, 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States v. U.S. Airways Group, Inc.*, 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (explaining that the "court's inquiry is limited" in Tunney Act settlements); *United States v. InBev N.V./S.A.*, No. 08-1965 (JR), 2009 U.S. Dist. LEXIS 84787, at \*3 (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires "into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable").

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations in the government's complaint, whether the decree is sufficiently clear, whether its enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft*, 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States v. BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) (quoting *United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft*, 56 F.3d at 1460–62; *United States v. Alcoa, Inc.*, 152 F. Supp. 2d 37, 40 (D.D.C. 2001);

*InBev*, 2009 U.S. Dist. LEXIS 84787, at \*3. Instead:

[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "within the reaches of the public interest." More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

*Bechtel*, 648 F.2d at 666 (emphasis added) (citations omitted).<sup>1</sup>

In determining whether a proposed settlement is in the public interest, a district court "must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations." *SBC Commc'ns*, 489 F. Supp. 2d at 17; *see also U.S. Airways*, 38 F. Supp. 3d at 74–75 (noting that a court should not reject the proposed remedies because it believes others are preferable and that room must be made for the government to grant concessions in the negotiation process for settlements); *Microsoft*, 56 F.3d at 1461 (noting the need for courts to be "deferential to the government's predictions as to the effect of the proposed remedies"); *United States v. Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant "due respect to the government's prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case"). The ultimate question is whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.'" *Microsoft*, 56 F.3d at 1461 (quoting *United States v. Western Elec. Co.*, 900 F.2d 283, 309 (D.C. Cir. 1990)). To meet this standard, the United States "need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms." *SBC Commc'ns*, 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations

that the United States has alleged in its complaint, and does not authorize the court to "construct [its] own hypothetical case and then evaluate the decree against that case." *Microsoft*, 56 F.3d at 1459; *see also U.S. Airways*, 38 F. Supp. 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev*, 2009 U.S. Dist. LEXIS 84787, at \*20 ("the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged"). Because the "court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that "the court is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States did not pursue. *Microsoft*, 56 F.3d at 1459–60. As a court in this district confirmed in *SBC Communications*, courts "cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power." *SBC Commc'ns*, 489 F. Supp. 2d at 15.

In its 2004 amendments,<sup>2</sup> Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that "[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene." 15 U.S.C. § 16(e)(2); *see also U.S. Airways*, 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). This language explicitly wrote into the statute what Congress intended when it first enacted the Tunney Act in 1974. As Senator Tunney explained: "[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." 119 Cong. Rec. 24,598 (1973)

<sup>1</sup> *See also BNS*, 858 F.2d at 464 (holding that the court's "ultimate authority under the [APPA] is limited to approving or disapproving the consent decree"); *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to "look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass").

<sup>2</sup> The 2004 amendments substituted "shall" for "may" in directing relevant factors for a court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. Compare 15 U.S.C. § 16(e) (2004), with 15 U.S.C. § 16(e)(1) (2006); *see also SBC Commc'ns*, 489 F. Supp. 2d at 11 (concluding that the 2004 amendments "effected minimal changes" to Tunney Act review).

(statement of Sen. Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court’s “scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.” *SBC Commc’ns*, 489 F. Supp. 2d at 11. A court can make its public interest determination based on the competitive impact statement and response to public comments alone. *U.S. Airways*, 38 F. Supp. 3d at 76. *See also United States v. Enova Corp.*, 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the “Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone”); S. Rep. No. 93–298 93d Cong., 1st Sess., at 6 (1973) (“Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.”).

VIII. DETERMINATIVE DOCUMENTS

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.  
Date: December 6, 2018 Respectfully submitted,

Kenneth A. Libby  
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U.S. Department of Justice  
Antitrust Division  
c/o Federal Trade Commission  
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[FR Doc. 2018–27055 Filed 12–13–18; 8:45 am]  
BILLING CODE 6750–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Bulk Manufacturer of Controlled Substances Application: Usona Institute

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before February 12, 2019.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal

Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Assistant Administrator of the DEA Diversion Control Division (“Assistant Administrator”) pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.33(a), this is notice that on October 31, 2018, Usona Institute, 2800 Woods Hollow Road, Madison, Wisconsin 53711 applied to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Controlled substance	Drug code	Schedule
5-Methoxy-N-N-dimethyltryptamine .....	7431	I
Dimethyltryptamine .....	7435	I

The institute plans to manufacture the listed controlled substances synthetically in bulk for use in institute-sponsored research.

Dated: December 4, 2018.

John J. Martin,  
Assistant Administrator.

[FR Doc. 2018–27132 Filed 12–13–18; 8:45 am]  
BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Application: Arizona Department of Corrections

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic class, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration or the proposed authorization to import on or before

January 14, 2019. Such persons may also file a written request for a hearing on the application for registration and for authorization to import on or before January 14, 2019.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152. All requests for hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrisette Drive, Springfield, Virginia 22152. All requests for hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrisette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a regulation under 21 U.S.C. 952(a)(2)(B) authorizing the

importation of a controlled substance in schedule I or II, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing. Additionally, pursuant to 21 CFR 1301.34(a), the Administrator of the Drug Enforcement Administration (DEA) shall, upon the filing of an application for registration to import a controlled substance in schedule I or II under 21 U.S.C. 952(a)(2)(B), provide notice and the opportunity to request a hearing to manufacturers holding registrations for the bulk manufacture of the substance and to applicants for such registrations.

The Attorney General has delegated his authority under the Controlled Substances Act,<sup>1</sup> including the provisions codified at 21 U.S.C. 952 and

<sup>1</sup> The provisions of federal law relating to the import and export of controlled substances—those found in 21 U.S.C. 951 through 971—are more precisely referred to as the Controlled Substances Import and Export Act. However, federal courts and DEA often use the term “Controlled Substances Act” to refer collectively to all provisions from 21 U.S.C. 801 through 971 and, for ease of exposition, this document will do likewise.

958, to the DEA Administrator, 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been delegated to the Assistant Administrator of the DEA Diversion Control Division ("Assistant Administrator") pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

Therefore, in accordance with 21 U.S.C. 958(i) and 21 CFR 1301.34(a), this is notice that on June 11, 2018, Arizona Department of Corrections, 1305 E Butte Avenue, ASPC-Florence, Florence, Arizona 85132-9221, re-applied to be registered as an importer of Pentobarbital (2270), a basic class of the controlled substance listed in schedule II.

The facility intends to import the above-listed controlled substance for legitimate use. This particular controlled substance is not available for the intended legitimate use within the current domestic supply of the United States.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture this basic class of controlled substance may file comments or objections to the issuance of the proposed registration or to the authorization of this importation,

and may, at the same time, file a written request for a hearing. Any such comments, objections, or hearing requests should be addressed as described above.

Dated: December 4, 2018.

**John J. Martin,**

*Assistant Administrator.*

[FR Doc. 2018-27131 Filed 12-13-18; 8:45 am]

**BILLING CODE 4410-09-P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

[Docket No. DEA-392]

#### Importer of Controlled Substances Application: Usona Institute

**ACTION:** Notice of application.

**DATES:** Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before January 14, 2019. Such persons may also file a written request for a hearing on the application on or before January 14, 2019.

**ADDRESSES:** Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152. All requests for hearing must be sent to: Drug Enforcement

Administration, Attn: Administrator, 8701 Morrisette Drive, Springfield, Virginia 22152. All requests for hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrisette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152.

**SUPPLEMENTARY INFORMATION:** The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Assistant Administrator of the DEA Diversion Control Division ("Assistant Administrator") pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.34(a), this is notice that on October 31, 2018, Usona Institute, 2800 Woods Hollow Road, Madison, Wisconsin 53711 applied to be registered as an importer of the following basic classes of controlled substances:

Controlled substance	Drug code	Schedule
5-Methoxy-N-N-dimethyltryptamine .....	7431	I
Dimethyltryptamine .....	7435	I

The institute plans to import the listed controlled substances for potential formulation development for substances to be used in institute-sponsored research.

Dated: December 4, 2018.

**John J. Martin,**

*Assistant Administrator.*

[FR Doc. 2018-27133 Filed 12-13-18; 8:45 am]

**BILLING CODE 4410-09-P**

## DEPARTMENT OF JUSTICE

**OMB Number 1117-0008]**

#### Agency Information Collection Activities; Proposed eCollection, eComments Requested; Extension Without Change of a Previously Approved Collection; Application for Procurement Quota for Controlled Substance and for Ephedrine, Pseudoephedrine, and Phenylpropanolamine; DEA Form 250

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

**ACTION:** 60-Day Notice.

**SUMMARY:** The Department of Justice, Drug Enforcement Administration (DEA), will be submitting the following information collection request to the Office of Management and Budget 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 February 12, 2019.

**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 Kathy L. Federico, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrisette Drive, Springfield, Virginia 22152; Telephone: (202) 598-6812.

**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 proposed 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 of a currently approved collection.

2. *Title of the Form/Collection:* Application for Procurement Quota for Controlled Substance and for Ephedrine, Pseudoephedrine, and Phenylpropanolamine.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* DEA Form 250. The applicable component within the Department of Justice is the Drug Enforcement Administration, Diversion Control Division.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

*Affected public (Primary):* Business or other for-profit.

*Affected public (Other):* None.

*Abstract:* Pursuant to 21 U.S.C. 826 and 21 CFR 1303.12(b) and 1315.32, any person who desires to use, during the next calendar year, any basic class of controlled substances listed in schedules I or II, or the List I chemicals ephedrine, pseudoephedrine, or phenylpropanolamine for purposes of manufacturing must apply on DEA Form 250 for a procurement quota for such class or List I chemical.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The DEA estimates 344 respondents complete 3,066 DEA Form 250 applications annually, and that each form requires 0.5 hours to complete.

6. *An estimate of the total public burden (in hours) associated with the proposed collection:* The DEA estimates this collection takes a total of 1,533 annual burden hours.

If additional information is required, please 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, Suite 3E.405B, Washington, DC 20530.

Dated: December 10, 2018.

**Melody Braswell,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2018–27059 Filed 12–13–18; 8:45 am]

**BILLING CODE 4410–09–P**

#### DEPARTMENT OF JUSTICE

[OMB Number 1117–0029]

#### Agency Information Collection Activities; Proposed eCollection, eComments Requested; Extension Without Change of a Previously Approved Collection; Annual Reporting Requirement for Manufacturers of Listed Chemicals

**AGENCY:** Drug Enforcement Administration, Department of Justice.  
**ACTION:** 60-Day Notice.

**SUMMARY:** The Department of Justice, Drug Enforcement Administration (DEA), will be submitting the following information collection request to the Office of Management and Budget 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 February 12, 2019.

**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 Kathy L. Federico, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrisette Drive, Springfield, Virginia 22152; Telephone: (202) 598–6812.

**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 proposed 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 of a currently approved collection.

2. *Title of the Form/Collection:* Annual Reporting Requirement for Manufacturers of Listed Chemicals.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form number: N/A. The applicable component within the Department of Justice is the Drug Enforcement Administration, Diversion Control Division.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

*Affected public (Primary):* Business or other for-profit.

*Affected public (Other):* None.

*Abstract:* Pursuant to 21 U.S.C. 830(b)(2) and 21 CFR 1310.05(d), manufacturers of listed chemicals must file annual reports of manufacturing, inventory, and use data for the listed chemicals they manufacture. These reports allow the DEA to monitor the volume and availability of domestically manufactured listed chemicals, which may be subject to diversion for the illicit production of controlled substances.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Each respondent for this information collection completes one response per year. The DEA estimates there are 50 respondents, and that each response takes 0.25 hours to complete.

6. *An estimate of the total public burden (in hours) associated with the proposed collection:* The DEA estimates this collection takes a total of 12.5 annual burden hours.



If additional information is required, please 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, Suite 3E.405B, Washington, DC 20530.

Dated: December 10, 2018.

**Melody Braswell,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2018-27058 Filed 12-13-18; 8:45 am]

BILLING CODE 4410-09-P

## DEPARTMENT OF JUSTICE

[OMB Number 1117-0047]

### **Agency Information Collection Activities; Proposed eCollection, eComments Requested; Extension Without Change of a Previously Approved Collection; Application for Import Quota for Ephedrine, Pseudoephedrine, and Phenylpropanolamine; DEA Form 488**

**AGENCY:** Drug Enforcement Administration, Department of Justice.  
**ACTION:** 60-Day notice.

**SUMMARY:** The Department of Justice, Drug Enforcement Administration (DEA), will be submitting the following information collection request to the Office of Management and Budget 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 February 12, 2019.

**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 Kathy L. Federico, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrisette Drive, Springfield, Virginia 22152; Telephone: (202) 598-6812.

**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 proposed 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 of a currently approved collection.

2. *Title of the Form/Collection:* Application for Import Quota for Ephedrine, Pseudoephedrine, and Phenylpropanolamine.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* DEA Form 488. The applicable component within the Department of Justice is the Drug Enforcement Administration, Diversion Control Division.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Affected public (Primary): Business or other for-profit.

Affected public (Other): Not-for-profit institutions; Federal, State, local, and tribal governments.

Abstract: Pursuant to 21 U.S.C. 952 and 21 CFR 1315.34, any person who desires to import the List I chemicals Ephedrine, Pseudoephedrine, or Phenylpropanolamine during the next calendar year must apply on DEA Form 488 for an import quota for each such List I chemical.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The DEA estimates 49 respondents complete 126 DEA Form 488 applications annually, and that each form takes 0.5 hours to complete. Respondents complete a separate DEA Form 488 for each List I chemical for which quota is sought.

6. *An estimate of the total public burden (in hours) associated with the proposed collection:* The DEA estimates this collection takes a total of 63 annual burden hours.

If additional information is required, please 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, Suite 3E.405B, Washington, DC 20530.

Dated: December 10, 2018.

**Melody Braswell,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2018-27061 Filed 12-13-18; 8:45 am]

BILLING CODE 4410-09-P

## DEPARTMENT OF JUSTICE

[OMB Number 1117-0014]

### **Agency Information Collection Activities; Proposed eCollection, eComments Requested; Revision of a Currently Approved Collection; Application for Registration and Application for Registration Renewal; DEA Forms 224, 224A**

**AGENCY:** Drug Enforcement Administration, Department of Justice.  
**ACTION:** 60-Day notice.

**SUMMARY:** The Department of Justice (DOJ), Drug Enforcement Administration (DEA), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

**DATES:** Comments are encouraged and will be accepted for 60 days until February 12, 2019.

**FOR FURTHER INFORMATION CONTACT:** If you have comments 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 Kathy L. Federico, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrisette Drive, Springfield, Virginia 22152; Telephone: (202) 598-6812.

**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 proposed 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. *Title of the Form/Collection:* Application for Registration and Application for Registration Renewal.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* DEA Forms: 224, 224A. The applicable component within the Department of Justice is the Drug Enforcement Administration, Diversion Control Division.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Affected public (Primary): Business or other for-profit.

Affected public (Other): Not-for-profit institutions; Federal, State, local, and tribal governments.

Abstract: The Controlled Substances Act (CSA) (21 U.S.C. 801–971) requires

all persons that manufacture, distribute, dispense, conduct research with, import, or export any controlled substance to obtain a registration issued by the Attorney General. The DEA will be revising the proposed information collection instruments concerning the liability questions on the Application for Registration and Application for Registration Renewal. Over the years, many applicants have answered some of the liability questions incorrectly. These changes will avoid confusion to the applicant by separating compound questions into multiple parts that will require the applicant to answer them individually.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

	Number of annual respondents *	Average time per response **	Total annual hours **
DEA-224 (paper) .....	3,838	0.22 hours (13 minutes) .....	832
DEA-224 (electronic) .....	125,848	0.15 hours (9 minutes) .....	18,877
DEA-224A (paper) .....	6,193	0.22 hours (13 minutes) .....	1,342
DEA-224A (electronic) .....	482,100	0.08 hours (5 minutes) .....	40,175
Total .....	617,979	.....	61,226

\* Although practitioners are registered for a three-year cycle and the number of registrants is not equally distributed between years of the cycle, October 1, 2017 to September 30, 2018 is a reasonable approximation of the average annual burden as it is very close to the average of the three years. Additionally, the growth rate in the number of practitioners is low enough where the actual numbers for this period would not be materially different from the number expected for the next several years.

\*\* An extra minute has been added to each average time per response to reflect the proposal for the first liability question in the application to now be broken down into two parts.

\*\*\* Figures are rounded.

6. *An estimate of the total public burden (in hours) associated with the proposed collection:* The DEA estimates that this collection takes 61,226 annual burden hours.

If additional information is required please 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, Suite 3E.405B, Washington, DC 20530.

Dated: December 10, 2018.

**Melody Braswell,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2018-27056 Filed 12-13-18; 8:45 am]

**BILLING CODE 4410-09-P**

## DEPARTMENT OF JUSTICE

[OMB Number 1117-0031]

**Agency Information Collection Activities; Proposed eCollection, eComments Requested; Revision of a Currently Approved Collection; Application for Registration Under Domestic Chemical Diversion Control Act of 1993, Renewal Application for Registration Under Domestic Chemical Diversion Control Act of 1993; DEA Forms 510, 510A**

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

**ACTION:** 60-day notice.

**SUMMARY:** The Department of Justice (DOJ), Drug Enforcement Administration (DEA), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

**DATES:** Comments are encouraged and will be accepted for 60 days until February 12, 2019.

**FOR FURTHER INFORMATION CONTACT:** If you have comments 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 Kathy L. Federico, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrisette Drive, Springfield, Virginia 22152; Telephone: (202) 598-6812.

**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 proposed 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. *Title of the Form/Collection:* Application for Registration under Domestic Chemical Diversion Control

Act of 1993; Renewal Application for Registration under Domestic Chemical Diversion Control Act of 1993.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* DEA Forms: 510, 510A. The applicable component within the Department of Justice is the Drug Enforcement Administration, Diversion Control Division.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Affected public (Primary): Business or other for-profit. Affected public (Other): None. Abstract: The DEA implements the Controlled Substances Act (CSA) which requires that every person who manufactures or distributes a list I chemical shall annually obtain a

registration for that purpose. The DEA will be revising the proposed information collection instruments concerning the liability questions on the Application for Registration under Domestic Chemical Diversion Control Act of 1993; and Renewal Application for Registration under Domestic Chemical Diversion Control Act of 1993. Over the years, many applicants have answered some of the liability questions incorrectly. These changes will avoid confusion to the applicant by separating compound questions into multiple parts that will require the applicant to answer them individually.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

	Number of annual respondents	Average time per response	Total annual burden hours
DEA-510 (paper) .....	6	0.20 hours (12 minutes) .....	1.20
DEA-510 (electronic) .....	88	0.17 hours (8 minutes) .....	11.73
DEA-510A (paper) .....	28	0.2 hours (10 minutes) .....	4.67
DEA-510A (electronic) .....	874	0.07 hours (4 minutes) .....	58.27
Total .....	996	.....	76.87

6. *An estimate of the total public burden (in hours) associated with the proposed collection:* The DEA estimates that this collection takes 76.87 annual burden hours.

If additional information is required please 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, Suite 3E.405B, Washington, DC 20530.

Dated: December 10, 2018.

**Melody Braswell,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2018-27060 Filed 12-13-18; 8:45 am]

**BILLING CODE 4410-09-P**

## DEPARTMENT OF JUSTICE

[OMB Number 1117-0006]

**Agency Information Collection Activities; Proposed eCollection, eComments Requested; Extension Without Change of a Previously Approved Collection; Application for Individual Manufacturing Quota for a Basic Class of Controlled Substance and for Ephedrine, Pseudoephedrine, and Phenylpropanolamine; DEA Form 189**

**AGENCY:** Drug Enforcement Administration, Department of Justice.  
**ACTION:** 60-Day notice.

**SUMMARY:** The Department of Justice, Drug Enforcement Administration (DEA), will be submitting the following information collection request to the Office of Management and Budget 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 February 12, 2019.

**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 Kathy L. Federico, Diversion

Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrisette Drive, Springfield, Virginia 22152; Telephone: (202) 598-6812.

**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 proposed 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 of a currently approved collection.

2. *Title of the Form/Collection:* Application for Individual Manufacturing Quota for a Basic Class of Controlled Substance and for Ephedrine, Pseudoephedrine, and Phenylpropanolamine.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* DEA Form 189. The applicable component within the Department of Justice is the Drug Enforcement Administration, Diversion Control Division.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

*Affected public (Primary):* Business or other for-profit.

*Affected public (Other):* None.

*Abstract:* Pursuant to 21 U.S.C. 826(c) and 21 CFR 1303.22 and 1315.22, any person who is registered to manufacture any basic class of controlled substances listed in Schedule I or II, or the List I chemicals ephedrine, pseudoephedrine, or phenylpropanolamine, and who desires to manufacture a quantity of such class or such List I chemical, must apply on DEA Form 189 for a manufacturing quota for such quantity of such class or List I chemical.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The DEA estimates 33 respondents complete 859 DEA Form 189 applications annually, and that each form takes 0.5 hours to complete.

6. *An estimate of the total public burden (in hours) associated with the proposed collection:* The DEA estimates this collection takes a total of 430 annual burden hours.

If additional information is required, please 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, Suite 3E.405B, Washington, DC 20530.

Dated: December 10, 2018.

**Melody Braswell,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2018-27057 Filed 12-13-18; 8:45 am]

**BILLING CODE 4410-09-P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

#### Agency Information Collection Activities; Comment Request; Statement of Expenditures and Financial Adjustments of Federal Funds for Unemployment Compensation for Federal Employees and Ex-Servicemembers Report

**ACTION:** Notice.

**SUMMARY:** The Department of Labor's (DOL's) Employment and Training Administration (ETA) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, "Statement of Expenditures and Financial Adjustments of Federal Funds for Unemployment Compensation for Federal Employees and Ex-Servicemembers Report." This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

**DATES:** Consideration will be given to all written comments received by February 12, 2019.

**ADDRESSES:** A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free by contacting Cindy Le by telephone at (202) 693-2829, TTY 1-877-889-5627 (these are not toll-free numbers), or by email at [Le.Cindy@dol.gov](mailto:Le.Cindy@dol.gov).

Submit written comments about or requests for a copy of this ICR by mail or courier to the U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance, Room S-4524, 200 Constitution Avenue NW, Washington, DC 20210, by email to [Le.Cindy@dol.gov](mailto:Le.Cindy@dol.gov), or by Fax at (202) 693-3975.

**SUPPLEMENTARY INFORMATION:** As part of continuing efforts to reduce paperwork and respondent burden, DOL conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the Office of Management and Budget (OMB) for final approval. This program helps to ensure requested data is provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and

the impact of collection requirements can be properly assessed.

Public Law 97-362, Miscellaneous Revenue Act of 1982, amended the Unemployment Compensation for Ex-Servicemembers (UCX) law (5 U.S.C. 8509), and Public Law 96-499, Omnibus Budget Reconciliation Act, amended the Unemployment Compensation for Federal Employees (UCFE) law (5 U.S.C. 8501, *et seq.*), requiring each Federal employing agency to pay the costs of regular and extended UCFE/UCX benefits paid to its employees by the State Workforce Agencies (SWAs). The ETA 191 report submitted quarterly by each SWA shows the amount of benefits that should be charged to each Federal employing agency. The Office of Unemployment Insurance uses this information to aggregate the SWA quarterly charges and submit one official bill to each Federal agency being charged. Federal agencies then reimburse the Federal Employees Compensation Account maintained by the U.S. Treasury. This collection is authorized by the Social Security Act, Section 303(a)(6).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB control number 1205-0162.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

DOL is particularly interested in comments that:

- 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;
- 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.

Agency: DOL-ETA.

Type of Review: Extension without changes.

Title of Collection: Statement of Expenditures and Financial Adjustments of Federal Funds for Unemployment Compensation for Federal Employees and Ex-Servicemembers Report.

Form: ETA 191.

OMB Control Number: 1205-0162.

Affected Public: State Workforce Agencies.

Estimated Number of Respondents: 53.

Frequency: Quarterly.

Total Estimated Annual Responses: 212.

Estimated Average Time per Response: 6 hours.

Estimated Total Annual Burden Hours: 1,272 hours.

Total Estimated Annual Other Cost Burden: \$0.

Authority: 44 U.S.C. 3506(c)(2)(A).

Molly E. Conway,

Acting Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2018-27074 Filed 12-13-18; 8:45 am]

BILLING CODE 4510-FW-P

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

[Docket No. OSHA-2017-0004]

#### Maritime Advisory Committee for Occupational Safety and Health (MACOSH): Notice of MACOSH Charter Renewal

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

ACTION: Notice of renewal of the MACOSH charter.

SUMMARY: In accordance with the provisions of the Federal Advisory

Committee Act (FACA), and after consultation with the General Services Administration, the Secretary of Labor is renewing the charter for the Maritime Advisory Committee for Occupational Safety and Health (MACOSH). The Committee will provide OSHA with expertise related to the Occupational Safety and Health Act (the OSH Act) of 1970. The term of the most recent MACOSH membership expired on January 20, 2018. A request for nominations notice was published in the **Federal Register** (83 FR 54147 (10/26/2018)). OSHA will publish a list of MACOSH members in the **Federal Register**.

#### For Additional Information Contact

For press inquiries: Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor; telephone: (202) 693-1999; email: [meilinger.francis2@dol.gov](mailto:meilinger.francis2@dol.gov).

For general information about MACOSH: Ms. Amy Wangdahl, Director, Office of Maritime and Agriculture, OSHA, U.S. Department of Labor; telephone: (202) 693-2066; email: [wangdahl.amy@dol.gov](mailto:wangdahl.amy@dol.gov).

For copies of this **Federal Register** notice: Electronic copies of this **Federal Register** notice are available at <http://www.regulations.gov>. This notice, as well as news releases and other relevant information, are also available at OSHA's web page at: [www.osha.gov](http://www.osha.gov).

**SUPPLEMENTARY INFORMATION:** The maritime industry includes shipyard employment, longshoring, marine terminal, and other related industries, e.g., commercial fishing and shipbreaking. The Secretary of Labor appoints MACOSH members to create a broad-based, balanced, and diverse committee reflecting these aspects of the maritime industry. Members represent a range of perspectives and include employers, employees, safety and health professional organizations, government organizations with interests or activities related to the maritime industry, academia, and the public. Members are selected based on their experience, knowledge, and competence in the field of occupational safety and health, particularly in the maritime industries.

The Committee will advise OSHA on matters relevant to the safety and health of employees in the maritime industry. This includes advice on maritime issues that will result in more effective enforcement, training, and outreach programs, and streamlined regulatory efforts. The Committee will function solely as an advisory body in compliance with the provisions of FACA and OSHA's regulations covering advisory committees (29 CFR part 1912).

#### Authority and Signature

Loren Sweatt, Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice under the authority granted by 29 U.S.C. 655(b)(1) and 656(b), 5 U.S.C. App. 2, Secretary of Labor's Order No. 1-2012 (77 FR 3912), and 29 CFR part 1912.

Signed at Washington, DC, on December 10, 2018.

Loren Sweatt,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2018-27109 Filed 12-13-18; 8:45 am]

BILLING CODE 4510-26-P

## NATIONAL SCIENCE FOUNDATION

### Sunshine Act Meetings

The National Science Board's Awards and Facilities Committee, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n-5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business, as follows:

**TIME AND DATE:** Wednesday, December 19, 2018, from 1:00-2:00 p.m. EST.

**PLACE:** This meeting will be held by teleconference at the National Science Foundation, 2415 Eisenhower Ave., Alexandria, VA 22314.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Committee Chair's opening remarks; discussion of options for proceeding with plans for Antarctic Infrastructure Modernization for Science (AIMS).

**CONTACT PERSON FOR MORE INFORMATION:** Point of contact for this meeting is: Elise Lipkowitz, [elipkowi@nsf.gov](mailto:elipkowi@nsf.gov), telephone: (703) 292-7000. Meeting information and updates may be found at <http://www.nsf.gov/nsb/meetings/notices.jsp#sunshine>. Please refer to the National Science Board website [www.nsf.gov/nsb](http://www.nsf.gov/nsb) for general information.

Chris Blair,

Executive Assistant to the NSB Office.

[FR Doc. 2018-27268 Filed 12-12-18; 4:15 pm]

BILLING CODE 7555-01-P

## NATIONAL SCIENCE FOUNDATION

### Sunshine Act Meetings

The National Science Board's Task Force on the Skilled Technical Workforce, pursuant to NSF regulations

(45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n-5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business, as follows:

**TIME AND DATE:** Friday, December 21, 2018 at 2:00–3:00 p.m. EST.

**PLACE:** This meeting will be held by teleconference at the National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314. An audio link will be available for the public. Members of the public must contact the Board Office to request the public audio link by sending an email to [nationalsciencebrd@nsf.gov](mailto:nationalsciencebrd@nsf.gov) at least 24 hours prior to the teleconference.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** Discussion of the Task Force's deliverables and associated production timelines.

**CONTACT PERSON FOR MORE INFORMATION:** Point of contact for this meeting is: Christina Maranto, [cmaranto@nsf.gov](mailto:cmaranto@nsf.gov), 703–292–7000. Meeting information and updates may be found at <http://www.nsf.gov/nsb/notices.jsp#sunshine>. Please refer to the National Science Board website at [www.nsf.gov/nsb](http://www.nsf.gov/nsb) for general information.

**Chris Blair,**

*Executive Assistant to the National Science Board Office.*

[FR Doc. 2018–27269 Filed 12–12–18; 4:15 pm]

**BILLING CODE 7555–01–P**

## NATIONAL SCIENCE FOUNDATION

### Request for Information on National Strategic Overview for Quantum Information Science

**AGENCY:** National Science Foundation.

**ACTION:** Notice of Request for Information; Correction.

**SUMMARY:** The National Science Foundation (NSF) published a document in the **Federal Register** of December 11, 2018, concerning a Request for Information on the National Strategic Overview for Quantum Information Science. There was a broken link in the notice.

#### Correction

In the **Federal Register** of December 11, 2018, in FR Doc. 2018–26754, on page 63685, in the third column, please correct the web link to read: [https://www.surveymonkey.com/r/QIS-RFI\\_Responses](https://www.surveymonkey.com/r/QIS-RFI_Responses).

**FOR FURTHER INFORMATION CONTACT:** C. Denise Caldwell at (703) 292–7371 or

[nsfscqis@nsf.gov](mailto:nsfscqis@nsf.gov). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Dated: December 11, 2018.

**Suzanne H. Plimpton,**

*Reports Clearance Officer, National Science Foundation.*

[FR Doc. 2018–27151 Filed 12–13–18; 8:45 am]

**BILLING CODE 7555–01–P**

## NATIONAL SCIENCE FOUNDATION

### Agency Information Collection Activities: Comment Request

**AGENCY:** National Science Foundation.

**ACTION:** Submission for OMB review; comment request.

**SUMMARY:** The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995. This is the second notice for public comment; the first was published in the **Federal Register** on September 17, 2018, and no comments were received. NSF is forwarding the proposed reinstatement submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. The full submission may be found at: <http://www.reginfo.gov/public/do/PRAMain>.

**DATES:** Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification.

**FOR FURTHER INFORMATION CONTACT:** Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725 17th Street NW, Room 10235, Washington, DC 20503, and Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314, or send email to [splimpto@nsf.gov](mailto:splimpto@nsf.gov). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

Copies of the submission(s) may be obtained by calling 703–292–7556.

**SUPPLEMENTARY INFORMATION:** NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency

informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Comments regarding (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 burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of 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 should be addressed to the points of contact in the **FOR FURTHER INFORMATION CONTACT** section.

*Title of Collection:* Grantee Reporting Requirements for Science and Technology Centers (STC): Integrative Partnerships.

*OMB Number:* 3145–0194.

*Type of Request:* Intent to seek approval to extend an information collection.

#### Abstract

##### Proposed Project

The Science and Technology Centers (STC): Integrative Partnerships Program supports innovation in the integrative conduct of research, education and knowledge transfer. Science and Technology Centers build intellectual and physical infrastructure within and between disciplines, weaving together knowledge creation, knowledge integration, and knowledge transfer. STCs conduct world-class research through partnerships of academic institutions, national laboratories, industrial organizations, and/or other public/private entities. New knowledge thus created is meaningfully linked to society.

STCs enable and foster excellent education, integrate research and education, and create bonds between learning and inquiry so that discovery and creativity more fully support the learning process. STCs capitalize on diversity through participation in center activities and demonstrate leadership in the involvement of groups underrepresented in science and engineering.

Centers selected will be required to submit annual reports on progress and

plans, which will be used as a basis for performance review and determining the level of continued funding. To support this review and the management of a Center, STCs will be required to develop a set of management and performance indicators for submission annually to NSF via an NSF evaluation technical assistance contractor. These indicators are both quantitative and descriptive and may include, for example, the characteristics of center personnel and students; sources of financial support and in-kind support; expenditures by operational component; characteristics of industrial and/or other sector participation; research activities; education activities; knowledge transfer activities; patents, licenses; publications; degrees granted to students involved in Center activities; descriptions of significant advances and other outcomes of the STC effort. Part of this reporting will take the form of a database which will be owned by the institution and eventually made available to an evaluation contractor. This database will capture specific information to demonstrate progress towards achieving the goals of the program. Such reporting requirements will be included in the cooperative agreement which is binding between the academic institution and the NSF.

Each Center's annual report will address the following categories of activities: (1) Research, (2) education, (3) knowledge transfer, (4) partnerships, (5) diversity, (6) management and (7) budget issues.

For each of the categories the report will describe overall objectives for the year, problems the Center has encountered in making progress towards goals, anticipated problems in the following year, and specific outputs and outcomes.

*Use of the Information:* NSF will use the information to continue funding of the Centers, and to evaluate the progress of the program.

*Estimate of Burden:* 100 hours per center for 12 centers for a total of 1,200 hours.

*Respondents:* Non-profit institutions; federal government.

*Estimated Number of Responses per Report:* One from each of the twelve centers.

Dated: December 10, 2018.

**Suzanne H. Plimpton,**

*Reports Clearance Officer, National Science Foundation.*

[FR Doc. 2018-27095 Filed 12-13-18; 8:45 am]

**BILLING CODE 7555-01-P**

## NUCLEAR REGULATORY COMMISSION

[NRC-2018-0013]

### Information Collection: Requests to Agreement States for Information

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of submission to the Office of Management and Budget; request for comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, "Requests to Agreement States for Information."

**DATES:** Submit comments by January 14, 2019.

**ADDRESSES:** Submit comments directly to the OMB reviewer at: OMB Office of Information and Regulatory Affairs (3150-0029), Attn: Desk Officer for the Nuclear Regulatory Commission, 725 17th Street NW, Washington, DC 20503; email: [oira\\_submission@omb.eop.gov](mailto:oira_submission@omb.eop.gov).

**FOR FURTHER INFORMATION CONTACT:** David Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-2084; email: [Infocollects.Resource@nrc.gov](mailto:Infocollects.Resource@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

#### I. Obtaining Information and Submitting Comments

##### A. Obtaining Information

Please refer to Docket ID NRC-2018-0013 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2018-0013. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC-2018-0013 on this website.

- *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](mailto:pdr.resource@nrc.gov). The supporting statement is

available in ADAMS under Accession No. ML18331A291.

- *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.

- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-2084; email: [Infocollects.Resource@nrc.gov](mailto:Infocollects.Resource@nrc.gov).

##### B. Submitting Comments

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at <http://www.regulations.gov> and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

#### II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, "Requests to Agreement States for Information." The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on August 23, 2018 (83 FR 42712).

1. *The title of the information collection:* "Requests to Agreement States for Information."

2. *OMB approval number:* 3150-0029.

3. *Type of submission:* Extension.

4. *The form number if applicable:* N/A.

5. *How often the collection is required or requested:* One time or as needed.

6. *Who will be required or asked to respond:* Thirty-Eight Agreement States who have signed Section 274(b) Agreements with the NRC and one additional State expected to have a Section 274(b) Agreement in fiscal year 2019.

7. *The estimated number of annual responses:* 351.

8. *The estimated number of annual respondents:* 39.

9. *An estimate of the total number of hours needed annually to comply with the information collection requirement or request:* 2,808.

10. *Abstract:* The Agreement States will be asked on a one-time or as-needed basis to respond to a specific incident, to gather information on licensing and inspection practices or other technical information. The results of such information requests, which are authorized under Section 274(b) of the Atomic Energy Act, will be utilized on part by the NRC in preparing responses to Congressional inquiries.

Dated at Rockville, Maryland, this 11th day of December 2018.

For the Nuclear Regulatory Commission.

**David C. Cullison,**

*NRC Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 2018-27164 Filed 12-13-18; 8:45 am]

**BILLING CODE 7590-01-P**

## POSTAL REGULATORY COMMISSION

[Docket No. CP2019-43; Order No. 4919]

### Inbound Parcel Post (at UPU Rates)

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is acknowledging a recent filing by the Postal Service of its intention to change prices not of general applicability to be effective January 1, 2019. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* December 18, 2018.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

### FOR FURTHER INFORMATION CONTACT:

David A. Trissell, General Counsel, at 202-789-6820.

## SUPPLEMENTARY INFORMATION:

### Table of Contents

- I. Introduction
- II. Contents of Filing
- III. Commission Action
- IV. Ordering Paragraphs

### I. Introduction

On December 10, 2018, the Postal Service filed notice announcing its intention to change prices not of general applicability for Inbound Parcel Post (at Universal Postal Union (UPU) Rates) effective January 1, 2019.<sup>1</sup>

### II. Contents of Filing

To accompany its Notice, the Postal Service filed: A redacted copy of the UPU International Bureau (IB) Circular that contains the new prices; a copy of the certification required under 39 CFR 3015.5(c)(2); redacted Postal Service data used to justify any bonus payments; a copy of the Postal Service's submission to the UPU in support of an inflation-linked adjustment; and a redacted copy of Governors' Decision 18-2. Notice at 2-3; *see id.* Attachments 2-6. The Postal Service also filed redacted financial workpapers. Notice at 3.

Additionally, the Postal Service filed an unredacted copy of Governors' Decision 18-2, an unredacted copy of the new prices, and related financial information under seal. *See id.* The Postal Service filed an application for non-public treatment of materials filed under seal. Notice, Attachment 1.

The Postal Service states that it has provided supporting documentation as required by Order Nos. 2102 and 2310.<sup>2</sup> In addition, the Postal Service states that it provided citations and copies of relevant UPU IB Circulars and updates to inflation-linked adjustments as required by Order No. 3716.<sup>3</sup>

### III. Commission Action

The Commission establishes Docket No. CP2019-43 for consideration of matters raised by the Notice.

The Commission invites comments on whether the Postal Service's filing is consistent with 39 U.S.C. 3632, 3633,

<sup>1</sup> Notice of the United States Postal Service of Filing Changes in Rates Not of General Applicability for Inbound Parcel Post (at UPU Rates), and Application for Non-Public Treatment, December 10, 2018, at 1-2 (Notice).

<sup>2</sup> Notice at 4-5. *See* Docket No. CP2014-52, Order Accepting Price Changes for Inbound Air Parcel Post (at UPU Rates), June 26, 2014, at 6 (Order No. 2102); Docket No. CP2015-24, Order Accepting Changes in Rates for Inbound Parcel Post (at UPU Rates), December 29, 2014, at 4 (Order No. 2310).

<sup>3</sup> Notice at 5. *See* Docket Nos. MC2017-58 and CP2017-86, Order Acknowledging Changes in Rates for Inbound Parcel Post (at UPU Rates), December 30, 2016, at 5 (Order No. 3716).

and 39 CFR part 3015. Comments are due no later than December 18, 2018. The public portions of the filing can be accessed via the Commission's website (<http://www.prc.gov>).

The Commission appoints Katalin K. Clendenin to serve as Public Representative in this docket.

### IV. Ordering Paragraphs

*It is ordered:*

1. The Commission establishes Docket No. CP2019-43 for consideration of the matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, Katalin K. Clendenin is appointed to serve as an officer of the Commission to represent the interests of the general public in this proceeding (Public Representative).

3. Comments are due no later than December 18, 2018.

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

By the Commission.

**Stacy L. Ruble,**

*Secretary.*

[FR Doc. 2018-27163 Filed 12-13-18; 8:45 am]

**BILLING CODE 7710-FW-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84770; File No. SR-NSCC-2018-011]

### Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Certain Fees and Make Other Changes

December 10, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 26, 2018, National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. NSCC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rules 19b-4(f)(2) and (f)(4) thereunder.<sup>4</sup> The Commission is publishing this notice to solicit comments on the

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(2) and (f)(4).



proposed rule change from interested persons.

## I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend Addendum A (Fee Structure) of the NSCC Rules & Procedures ("Rules")<sup>5</sup> with respect to certain fees as well as make other changes, as described in greater detail below.

## II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### (A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

The purpose of this proposed rule change is to amend Addendum A (Fee Structure) of the Rules with respect to certain fees and make other changes in order to (i) reduce complexity and increase transparency, (ii) better align fees with the costs of services provided by NSCC, and (iii) encourage Member practices that promote efficient market behavior. The proposed rule change would also make technical and conforming changes. Taken collectively, the proposed rule changes would reduce NSCC's revenue by approximately 4%.

In order to accomplish these objectives, NSCC is proposing to (i) remove fees with little or no activity, (ii) group fees for related or similar services under one fee, (iii) modify certain fees, and (iv) remove fees that relate to settlement of certain transaction activity.

#### (i) Background

NSCC provides clearance and settlement services for trades executed by its Members in the U.S. equity, corporate and municipal bond, and unit investment trust markets.

Members are assessed fees in accordance with Addendum A (Fee Structure). The current Fee Structure

covers a multitude of fees that are assessed on Members based upon their activities and the services utilized. The number of fees and the methods by which they are calculated make the current Fee Structure unnecessarily complex. In addition, certain fees in the current Fee Structure have over time become misaligned with the costs of services provided by NSCC.

NSCC has undertaken a strategic review of its pricing structure, and developed a revenue and pricing strategy with the goals of reducing pricing complexity, aligning pricing with costs of providing the services, and encouraging Member practices that promote efficient market behavior.<sup>6</sup>

#### A. Pricing Overly Complex

The number of fees and the methods by which they are calculated make the current Fee Structure difficult for Members to understand and reconcile. In fact, Members and market participants have often indicated to NSCC that the current Fee Structure is too complex and difficult to understand.

In order to streamline the Fee Structure, the proposal would include changes to standardize fees and remove fees that have little activity or no activity. The proposed changes would also eliminate fees that relate to delivery of certain securities outside of NSCC. In addition, in order to reduce the complexity of pricing, the proposed changes would group fees for similar services into one fee. By simplifying and updating the Fee Structure, these proposed changes would improve the transparency of the Rules.

#### B. Pricing Misalignment With Costs of Services

Certain fees in the current Fee Structure have over time become misaligned with NSCC's costs of providing the services. As such, the revenue from these fees no longer cover the costs of such services. NSCC believes it is reasonable and appropriate to assess Members fees that are commensurate with the costs of services provided to Members. Accordingly, the proposed changes would adjust certain fees so that revenue for NSCC would better align with the costs of the services.

<sup>6</sup> NSCC is also proposing changes to fees for NSCC's Mutual Fund Services and Insurance and Retirement Processing Services in a separate proposal. In addition, NSCC's affiliates, The Depository Trust Company ("DTC") and Fixed Income Clearing Corporation, are proposing changes to their respective fees.

#### C. Promote Efficient Market Behavior

The proposed changes would adjust certain fees in order to encourage Member practices that promote efficient market behavior.

#### (ii) Proposed Fee Changes

Based upon feedback from Members and market participants as well as a review of current fees conducted by NSCC as described above, NSCC is proposing to modify the Fee Structure to (i) reduce complexity and increase transparency, (ii) better align fees with the costs of services provided by NSCC, and (iii) encourage Member practices that promote efficient market behavior.

In that respect, the proposed Fee Structure would consolidate 28 fees, modify 2 existing fees and eliminate 8 fees, each as further described below.

NSCC is proposing to consolidate the following fee groupings—

- Bond Correction Fee for supplemental input on T+1  
Bond Correction Fee for supplemental input on T+2  
Bond Correction Fee for supplemental input after T+2  
Trade Rejection Fee
- Obligation Warehouse Fee to close an obligation and send to Continuous Net Settlement ("CNS")  
Clearance Activity Fee—the component that is calculated based on the number of sides processed monthly by NSCC  
Clearance Activity Fee—"value into the net" component  
Fee for Flip Trades
- Obligation Warehouse Fee to withhold an obligation from being closed and send to the CNS  
Obligation Warehouse Fee for each obligation closed due to Reconfirmation and Pricing Service ("RECAPS") (charged per RECAPS cycle)  
Clearance Activity Fee—"value out of the net" component  
Fee for Foreign Securities Transactions (Netted)
- Fee for Index Creation and Redemption Units instruction submitted for regular way (T+2) settlement  
Fee for Index Creation and Redemption Units instruction submitted for shortened settlement
- Fee for Failure to Deliver to CNS (Short-In CNS) per item short in CNS for 31 to 60 days at close of business  
Fee for Failure to Deliver to CNS (Short-In CNS) per item short in CNS for 61 to 90 days at close of business

<sup>5</sup> Capitalized terms not defined herein are defined in the Rules, available at [http://www.dtcc.com/~media/Files/Downloads/legal/rules/nscc\\_rules.pdf](http://www.dtcc.com/~media/Files/Downloads/legal/rules/nscc_rules.pdf).

Fee for Failure to Deliver to CNS (Short-In CNS) per item short in CNS for more than 90 days at close of business

- Fee for CNS Stock Dividend Payment (Long)
- Fee for CNS Cash Dividend and Interest Payment (Long)
- Fee for CNS Stock Dividend Payment (Short)
- Fee for CNS Cash and Interest Payment (Short)
- Automated Customer Account Transfer Service (“ACATS”) fee for Standard Transfer Initiation Form
- ACATS fee for Non-Standard Transfer Initiation Form
- ACATS fee for Recording Asset Delivers
- ACATS fee for Corrections—asset additions, deletions, or changes
- ACATS fee for Insurance Registrations
- ACATS fee for adjustment of customer account number
- ACATS fee for Account Transfer Rejects

NSCC is proposing to modify the following fees—

- Trade recording fee for each side of foreign security trades entered for settlement, but not compared by NSCC

- Fee in connection with New York State Transfer Taxes

NSCC is proposing to eliminate the following fees—

- Bond Correction Fee for Trades Deleted on T+1
- Bond Correction Fee for Trades Deleted on T+2
- Bond Correction Fee for Trades Deleted after T+2
- Obligation Warehouse Fee for each obligation closed due to Pair Off (charged per obligation side)
- Fee for day deliveries to CNS to cover short value positions
- Fee for research on invalid CNS dividend or interest claim
- Monthly Participant Fees for trade input, either (a) as a Service Bureau or (b) by an affiliated Service Bureau
- Special Service Fees for DTC Sponsored Accounts—available to each CNS participant who is not also a participant of DTC

The foregoing proposed fee changes would address pricing complexity, pricing misalignment with costs of services, and encourage member practices that promote efficient market behavior, as further described in the discussion below.

A. Fee Changes To Address Pricing Complexity Section I of Addendum A (Trade Comparison and Recording Service Fees)

In Section I.B.2.a., NSCC is proposing to group three Bond Correction Fees currently assessed to the submitter for all supplemental input on T+1 (\$0.60), T+2 (\$0.90), and after T+2 (\$1.50), along with the Trade Rejection Fee (\$.50 per bond reject) from Section I.B.3., into one single fee. Based on a blended average<sup>7</sup> of the four fees using 2017 volume numbers, NSCC is proposing a fee of \$0.95 to the submitter that would apply to all bond correction supplemental input after T. NSCC would accomplish this by deleting the four fees and revising the lead-in sentence to remove the exception language and add in \$0.95 as the fee applicable to the submitter.

In Section I.B.2.b., NSCC is proposing to remove three Bond Correction Fees currently assessed to both sides for trades deleted on T+1 (\$0.60), T+2 (\$0.90), and after T+2 (\$1.50). These fees currently have little or no activity, and NSCC is proposing to delete them.

In Section I.C.2., NSCC is proposing to change the trade recording fee charged for a foreign security trade entered for settlement, but not compared by NSCC, from \$0.75 to \$0.85 per side. NSCC is proposing this change in order to standardize the trade recording fees so that they would be the same for bonds as well as foreign security trades. NSCC believes having a standard trade recording fee regardless of the types of securities would help to reduce complexity of pricing and streamline the Fee Structure.

In Section I.D., NSCC is proposing to group the \$0.35 Obligation Warehouse Fee to close an obligation and send it to CNS, along with other fees, into the “value into the net” component of the Clearance Activity Fee in Section II.A., given that these fees all relate to activities going into the netting process.<sup>8</sup> Similarly, NSCC is proposing

<sup>7</sup> NSCC calculates the blended average by dividing the portion of 2017 revenue attributed to the relevant fee groups by the applicable 2017 volume numbers. The blended average is then used by NSCC as the resulting consolidated fee, with adjustments in some instances to achieve a round number. NSCC believes using this blended average approach would minimize impact to Members. For example, assume NSCC is grouping Fee A and Fee B into one fee using the blended average approach. If the 2017 revenue from these two fees was \$400,000 and these fees were collectively assessed 2,000 times during 2017, the resulting consolidated fee based on a blended average would be \$200 (\$400,000/2,000).

<sup>8</sup> In addition to the Obligation Warehouse Fee to close an obligation and send it to CNS, NSCC is also proposing to group (i) the component of the Clearance Activity Fee that is calculated based on the number of sides processed monthly by the CNS

to group two Obligation Warehouse Fees, (i) the \$0.05 fee to withhold an obligation from being closed and send to the CNS and (ii) the \$0.35 fee for each obligation closed due to RECAPS (charged per RECAPS cycle), along with the Fee for Foreign Securities Transactions (Netted) (\$.50 per item) from Section II.I., into the “value out of the net” component of the Clearance Activity Fee in Section II.A., given that these fees all relate to activities exiting the netting process. NSCC is also proposing to eliminate the Obligation Warehouse Fee for each obligation closed due to Pair Off that is charged per obligation side. This fee currently has little or no activity, and NSCC is proposing to delete it.

In Section I.E., NSCC is proposing to group the two fees for Index Creation and Redemption Units instructions into one fee based on a blended average<sup>9</sup> of the two fees using 2017 volume numbers. Specifically, NSCC is grouping the \$30 fee assessed on each side of each Index Creation and Redemption Units instruction submitted for regular way (T+2) settlement and the \$50 fee assessed on each side of each Index Creation and Redemption Units instruction submitted for shortened settlement into a single \$35 fee assessed on each side of each Index Creation and Redemption Units instruction submitted.

#### Section II of Addendum A (Trade Clearance Fees)

In Section II.A., NSCC is proposing to group the component of the Clearance Activity Fee that is calculated based on the number of sides processed monthly by CNS, along with other fees as discussed above, into the “value into the net” component of the Clearance Activity Fee.<sup>10</sup> After the proposed consolidation, the “value into the net” component of the Clearance Activity Fee would increase from \$0.331940430 to \$0.47 per million of processed value.

As discussed above, NSCC is proposing to group the two Obligation Warehouse Fees from Section I.D.5 and 9 with the “value out of the net” component of the Clearance Activity Fee in Section II.A., along with the Fee for Foreign Securities Transactions (Netted) (\$.50 per item) from Section II.I. After the proposed consolidation,

(\$0.021593 per side for zero to 35,000 monthly sides, \$0.001197 per side for 35,001 to 42,000 monthly sides, and \$0.000628 per side for over 42,000 monthly sides) from Section II.A. and (ii) the Fee for Flip Trades (\$.00060 per side) from Section II.D., into the “value into the net” component of the Clearance Activity Fee.

<sup>9</sup> See *supra* note 7.

<sup>10</sup> See *supra* note 8.

the “value out of the net” component of the Clearance Activity Fee would decrease from \$2.36844405 to \$2.12 per million of settling value.

NSCC is proposing to eliminate the fee for day deliveries to CNS to cover short valued positions (\$.40 per delivery) from Section II.B. This proposed change would simplify the Fee Structure by removing fees that relate to delivery of certain securities outside of NSCC.

In renumbered Section II.B., NSCC is proposing to group the three Fees for Failure to Deliver to CNS (Short-In CNS) (\$.50 per item short in CNS for 31 to 60 days at close of business; \$.75 per item short in CNS for 61 to 90 days at close of business; and \$1.00 per item short in CNS for more than 90 days at close of business) into a single fee, and increase it to \$3.00<sup>11</sup> for each item short in CNS for more than 30 days at close of business. NSCC is proposing these changes not only in order to reduce pricing complexity but also to encourage Member practices that promote efficient market behavior, *i.e.*, disincentivize Members to have CNS fails for more than 30 days. NSCC believes encouraging Members to address CNS fails that are more than 30 days would promote efficient market behavior because securities would be delivered to CNS on a more timely basis.

As discussed above, NSCC is proposing to group (i) the Fee for Flip Trades (\$.00060 per side) from Section II.D., along with other fees, into the “value into the net” component of the Clearance Activity Fee<sup>12</sup> and (ii) the Fee for Foreign Securities Transactions (Netted) (\$.50 per item) from Section II.I., along with two Obligation Warehouse Fees, (x) the \$0.05 fee to withhold an obligation from being closed and send to the CNS and (y) the \$0.35 fee for each obligation closed due to RECAPS (charged per RECAPS cycle), into the “value out of the net” component of the Clearance Activity Fee.

In renumbered Section II.G., NSCC is proposing to group the four fees relating to CNS stock dividend, cash dividend, and interest payments (Fee for CNS Stock Dividend Payment (Long) – \$12.00 per item; Fee for CNS Cash Dividend

and Interest Payment (Long) – \$1.40 per item; Fee for CNS Stock Dividend Payment (Short) – \$12 per item; and Fee for CNS Cash and Interest Payment (Short) – \$1.40 per item) into one fee. Based on a blended average<sup>13</sup> of the four fees using 2017 volume numbers, NSCC is proposing a fee of \$1.85 for each CNS stock dividend, cash dividend, and interest payment, including both long and short. NSCC is also proposing to remove the fee for research on invalid CNS dividend or interest claim (\$70 per claim). This fee currently has little or no activity, and NSCC is proposing to delete it.

#### Section IV of Addendum A (Other Service Fees)

In Section IV.F., NSCC is proposing to group seven fees relating to ACATS into one single fee. Specifically, NSCC is proposing to group the following ACATS fees: (i) The ACATS fee for Standard Transfer Initiation Form (\$.18 per submission), (ii) the ACATS fee for Non-Standard Transfer Initiation Form (\$.18 per submission), (iii) the ACATS fee for Recording Asset Delivers (\$.05 per asset which is reported by the delivering firm), (iv) the ACATS fee for Corrections – asset additions, deletions, or changes (\$.06 per asset), (v) the ACATS fee for Insurance Registrations (\$.25 per insurance registration submitted, to the receiver and the deliverer), (vi) the ACATS fee for adjustment of customer account number (\$.12 per adjustment), and (vii) the ACATS fee for Account Transfer Rejects (\$1.20 per full account reject per side where both parties are required by their designated examining authority or other regulatory body to use an automated customer account transfer service), into a new proposed fee for account transfers. Based on a blended average<sup>14</sup> of the seven fees using 2017 volume numbers, NSCC is proposing an ACATS fee for Account Transfers of \$0.50 per transfer initiation.

#### Section V of Addendum A (Pass-Through and Other Fees)

NSCC is proposing to eliminate the Monthly Participant Fees for trade input, either (a) as a Service Bureau or (b) by an affiliated Service Bureau (\$250.00 per month) from Section V.A.2. NSCC is also proposing to eliminate the Special Service Fees for DTC Sponsored Accounts (available to each CNS participant who is not also a participant of DTC) that is currently in Section V.B.1. Both of these fees currently have

little or no activity, and NSCC is proposing to delete them.

#### B. Fee Changes to Address Pricing Misalignment With Costs of Service

In Section III.B., NSCC is proposing to adjust the fee assessed for services in connection with New York State (“NYS”) stock transfer taxes from \$1.00 per form to \$175.00 per month.<sup>15</sup> NSCC has not increased this fee since 1990<sup>16</sup> even though the costs of providing this service have increased. In addition, NSCC believes changing the way this fee is charged from “per form” to “per month” would simplify the fee reconciliation process for Members because they would no longer need to ensure the number of forms they submitted is consistent with fees charged. NSCC believes assessing Members a \$175 monthly fee for this service is appropriate because doing so would not only allow NSCC to cover the increased costs of providing this service but also simplify the fee reconciliation process for Members that use this service.

#### C. Fee Changes To Promote Efficient Market Behavior

As discussed above, in renumbered Section II.B., NSCC is proposing to group the current three fees for failure to deliver to CNS (\$.50 per item short in CNS for 31 to 60 days at close of business; \$.75 per item short in CNS for 61 to 90 days at close of business; and \$1.00 per item short in CNS for more than 90 days at close of business) into one single fee of \$3.00<sup>17</sup> per item short in CNS for more than 30 days at close of business. In addition to reduce pricing complexity, these changes are being proposed in order to encourage Member practices that promote efficient market behavior (*i.e.*, encourage Members to address CNS fails that are more than 30 days). NSCC believes encouraging Members to address CNS fails that are more than 30 days would promote efficient market behavior because securities would be delivered to CNS on a more timely basis.

<sup>15</sup> This service is provided under Rule 14 (Transfer Taxes) to facilitate Members' compliance with the NYS stock transfer tax, which is imposed on the sale or transfer of certain securities within New York. *See supra* note 5. In 2017, this service was utilized by approximately 14 Members, all of whom were either large or medium-size firms. On average, each Member submitted approximately 20 forms per month.

<sup>16</sup> *See* Securities Exchange Act Release No. 28085 (June 1, 1990), 55 FR 23495 (June 8, 1990) (SR–NSCC–89–18).

<sup>17</sup> *See supra* note 11.

<sup>11</sup> Based on discussion with clients, NSCC believes that imposing a \$3.00 fee per day for each item short in CNS for more than 30 days is an appropriate amount that would serve as an effective deterrent to Members having CNS fails for more than 30 days (*i.e.*, Members would be incentivized to deliver securities to CNS within 30 days of the settlement date so that they would not be assessed this daily fee).

<sup>12</sup> *See supra* note 8.

<sup>13</sup> *See supra* note 7.

<sup>14</sup> *Id.*

#### D. Technical and Conforming Changes

NSCC is proposing a number of technical and conforming changes. Specifically, due to the grouping and/or removal of certain fees as described above, NSCC is proposing to renumber or re-letter, as applicable, current Fee Structure Sections I.D.6 to 8 and 11; II.A.(c), C., E. to H., and J.; IV.F.; V.A.3 to 4; and V.B.2 to 7.

Additionally, NSCC is proposing to update the format of (i) the \$.40 Listed Equity System Correction Fees to \$.40 in Section I.B.1., (ii) the Fails to Deliver to CNS (Short-In CNS) \$.25 fee per item short in CNS for 1 to 30 days at close of business to \$.25 in re-lettered Section II.B., (iii) the \$.40 per item fee for security orders generated to \$.40 in re-lettered Section II.C., (iv) the \$.75 per item fee for Clearing Interface Exemption or Inclusion Instruction to NSCC to \$.75 in re-lettered Section II.E., (v) the \$.06 ACATS fee for Recording Asset Receives to \$.06 in Section IV.F.2., and (vi) the \$.12 ACATS fee for Non-CNS Receive/Deliver Orders issued to \$.12 in re-numbered Section IV.F.3.

NSCC is also proposing to delete the word “withhold” and replace it with “reversal” in the parenthetical portion within the lead-in sentence of Section I.B.2.a. This change is being proposed in order to conform with the recent revisions to simplify, clarify, and improve the description of the rules regarding submission and processing of syndicate takedown trades and syndicate takedown reversals in Procedure II, Section D.2(A)(2)(g) of the Rules.<sup>18</sup>

#### (iii) Expected Member Impact

In general, NSCC anticipates that the proposal would result in fee reductions for approximately 127 Members (41%) and fee increases for approximately 35 Members (11%). Of the 35 Members that may have their fees increased, 20 would have an increase of less than \$1,000 per year, 7 would have an increase between \$1,000 to \$10,000 per year, 3 would have an increase of \$27,000 to \$40,000 per year, and 5 would have an increase of \$100,000 to \$200,000 per year. These estimates are calculated based on 2017 volume numbers.

#### (iv) Member Outreach

Beginning in June 2018, NSCC has conducted ongoing outreach to Members in order to provide them with notice of the proposed changes to the affected fees. As of the date of this

filing, no written comments relating to the proposed changes have been received in response to this outreach. The Commission will be notified of any written comments received.

#### (v) Implementation Timeframe

NSCC would implement this proposal on January 1, 2019. As proposed, a legend would be added to the Fee Structure stating there are changes that became effective upon filing with the Commission but have not yet been implemented. The proposed legend also would include a date on which such changes would be implemented and the file number of this proposal, and state that, once this proposal is implemented, the legend would automatically be removed from the Fee Structure.

#### 2. Statutory Basis

NSCC believes this proposal is consistent with the requirements of the Act, and the rules and regulations thereunder applicable to a registered clearing agency. Specifically, NSCC believes this proposal is consistent with Sections 17A(b)(3)(D)<sup>19</sup> and 17A(b)(3)(F)<sup>20</sup> of the Act and Rule 17Ad-22(e)(23)(ii),<sup>21</sup> as promulgated under the Act, for the reasons described below.

Section 17A(b)(3)(D) of the Act requires that the Rules provide for the equitable allocation of reasonable dues, fees, and other charges among its participants.<sup>22</sup> NSCC believes the proposed rule changes to the Fee Structure, described in detail in Item II(A)(1)(ii)(A) above (entitled “Fee Changes to Address Pricing Complexity”), to reduce the complexity of the Fee Structure would provide for the equitable allocation of reasonable fees. NSCC believes the proposed changes to address pricing complexity are equitable because they would apply uniformly to all Members that use the applicable services. NSCC believes these proposed changes are reasonable because they are designed to reduce complexity and increase transparency of the Fee Structure with minimal client impact. Therefore, NSCC believes the proposed rule changes described in detail in Item II(A)(1)(ii)(A) above to reduce the complexity of the Fee Structure are consistent with Section 17A(b)(3)(D) of the Act.

NSCC believes the proposed rule changes to the Fee Structure, described in detail in Item II(A)(1)(ii)(B) above (entitled “Fee Changes to Address

Pricing Misalignment with Costs of Service”), to better align pricing with costs of services would provide for the equitable allocation of reasonable fees. The proposed changes would modify the fee assessed for services in connection with NYS stock transfer taxes from \$1.00 per form to a monthly fee of \$175 in order to better align with the increased costs of providing the services. NSCC believes the proposed changes to the rate as well as the method of charging this fee are equitable because they are designed to simplify the fee reconciliation process for Members and would apply uniformly to all Members that utilize the services. NSCC believes the proposed changes are reasonable because they would be commensurate with the costs of resources allocated by NSCC in providing such services. Therefore, NSCC believes the proposed rule changes to the Fee Structure described in detail in Item II(A)(1)(ii)(B) above to better align pricing with costs of services are consistent with Section 17A(b)(3)(D) of the Act.

NSCC also believes the proposed rule changes to the Fee Structure, described in detail in Item II(A)(1)(ii)(C) above (entitled “Fee Changes to Promote Efficient Market Behavior”), to encourage Member practices that promote efficient market behavior would provide for the equitable allocation of reasonable fees. The proposed change would assess Members a daily \$3 fee per item short in CNS that are more than 30 days at close of business. NSCC believes the proposed changes are equitable because they would apply uniformly to all Members that have CNS fails that are more than 30 days. NSCC believes the proposed changes are reasonable because they are designed to encourage Members to address CNS fails that are more than 30 days in order to promote efficient market behavior. Therefore, NSCC believes the proposed rule changes to the Fee Structure described in detail in Item II(A)(1)(ii)(C) above to encourage Member practices that promote efficient market behavior are consistent with Section 17A(b)(3)(D) of the Act.

Section 17A(b)(3)(F) of the Act requires, in part, that the Rules be designed to promote the prompt and accurate clearance and settlement of securities transactions.<sup>23</sup> The proposed rule changes to promote efficient market behavior, as described in Item II(A)(1)(ii)(C) above (entitled “Fee Changes to Promote Efficient Market Behavior”), are designed to encourage Members to address CNS fails that are

<sup>19</sup> 15 U.S.C. 78q-1(b)(3)(D).

<sup>20</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>21</sup> 17 CFR 240.17Ad-22(e)(23)(ii).

<sup>22</sup> 15 U.S.C. 78q-1(b)(3)(D).

<sup>23</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>18</sup> See Securities Exchange Act Release 83397 (June 8, 2018), 83 FR 27802 (June 14, 2018) (SR-NSCC-2018-002).

more than 30 days. In this respect, the proposal would encourage Member practices that would reduce the number of CNS fails that are more than 30 days and thereby promote the prompt and accurate clearance and settlement of securities transactions. As such, NSCC believes the proposed rule changes to promote efficient market behavior are consistent with Section 17A(b)(3)(F) of the Act.

The proposed rule changes to make technical and conforming changes, as described in Item II(A)(1)(ii)(D) above (entitled “Technical and Conforming Changes”), would help ensure that the Rules, including the Fee Structure, remain accurate and clear to Members. Having accurate and clear Rules would help Members to better understand their rights and obligations regarding NSCC’s clearance and settlement services. NSCC believes that when Members better understand their rights and obligations regarding NSCC’s clearance and settlement services, they can act in accordance with the Rules. NSCC believes that better enabling Members to comply with the Rules would promote the prompt and accurate clearance and settlement of securities transactions by NSCC. As such, NSCC believes the proposed rule changes to make technical and conforming changes are consistent with Section 17A(b)(3)(F) of the Act.

Rule 17Ad–22(e)(23)(ii) under the Act requires NSCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in the covered clearing agency.<sup>24</sup> NSCC believes that the proposed rule changes to reduce the complexity of the Fee Structure, as described in Item II(A)(1)(ii)(A) above (entitled “Fee Changes to Address Pricing Complexity”), and to make technical and conforming changes, as described in Item II(A)(1)(ii)(D) above (entitled “Technical and Conforming Changes”), would help ensure that the Fee Structure is transparent and clear to Members. Having a transparent and clear Fee Structure would help Members, NSCC believes, to better understand NSCC’s fees and help provide Members with increased predictability and certainty regarding the fees they incur by participating in NSCC. As such, NSCC believes the proposed rule changes to reduce the complexity of the Fee Structure and to make technical and conforming changes

are consistent with Rule 17Ad–22(e)(23)(ii) under the Act.

*(B) Clearing Agency’s Statement on Burden on Competition*

NSCC believes the proposed rule changes to modify (i) the trade recording fee for foreign security trades and (ii) the fee assessed for services in connection with NYS stock transfer taxes, may have an impact on competition because these changes would likely increase the fees of those Members that utilize these services when compared to their fees under the current Fee Structure. NSCC believes these proposed rule changes could burden competition by negatively affecting such Members’ operating costs. While these Members may experience increases in their fees when compared to their fees under the current Fee Structure, NSCC does not believe such change in fees would in and of itself mean that the burden on competition is significant. This is because even though the amount of the fee increase may seem significant in some instances (e.g., going from \$1 per form to \$175 per month), NSCC believes the increase in fees would similarly affect all Members that utilize the services, and therefore the burden on competition would not be significant.

Regardless of whether the burden on competition is deemed significant, NSCC believes any burden on competition that is created by these proposed rule changes would be necessary and appropriate in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act.<sup>25</sup>

The proposed rule changes to modify (i) the trade recording fee for foreign security trades and (ii) the fee assessed for services in connection with NYS stock transfer taxes, would be necessary in furtherance of the purposes of the Act because the Rules must provide for the equitable allocation of reasonable dues, fees, and other charges among its participants.<sup>26</sup> As described above, NSCC believes that the proposed rule changes would result in fees that are equitably allocated (by applying uniformly to all Members that use the applicable services) and would result in reasonable fees (by reducing the complexity of the Fee Structure with minimal client impact and by aligning with costs, respectively). As such, NSCC believes these proposed rule changes would be necessary in furtherance of the

purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act.<sup>27</sup>

NSCC believes any burden on competition that is created by the proposed rule changes to modify (i) the trade recording fee for foreign security trades and (ii) the fee assessed for services in connection with NYS stock transfer taxes, would also be appropriate in furtherance of the purposes of the Act. The proposed rule changes to modify the trade recording fee for foreign security trades would provide NSCC with the ability to assess a standard trade recording fee regardless of the types of securities and thereby help to reduce complexity of pricing and streamline the Fee Structure. The proposed rule changes to modify the fee for the NYS stock transfer tax service would allow NSCC to cover increased costs of providing the service as well as simplify the fee reconciliation process for Members that use this service. Having the ability to assess fees that are (i) standard regardless of the types of securities and (ii) commensurate with NSCC’s costs of providing the services, would help NSCC to (x) reduce complexity of pricing as well as streamline the Fee Structure and (y) continue providing dependable and stable clearance and settlement services to its Members. As such, NSCC believes these proposed rule changes would be appropriate in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act.<sup>28</sup>

NSCC believes the proposed rule changes to promote efficient market behavior, as discussed above in Item II(A)(1)(ii)(C), may have an impact on competition because these changes would likely increase the fees of those Members with CNS fails that are more than 30 days. NSCC believes these proposed rule changes could burden competition by negatively affecting such Members’ operating costs. While these Members may experience increases in their fees when compared to their fees under the current Fee Structure, NSCC does not believe such change in fees would in and of itself mean that the burden on competition is significant. This is because even though the amount of the fee increase may be significant (with a maximum increase of \$2.50 for each fail over 30 days), NSCC believes the increase in fees would similarly affect all Members that have CNS fails that are more than 30 days and therefore the burden on competition would not be significant. Regardless of whether the burden on competition is deemed significant, NSCC believes any burden

<sup>24</sup> 17 CFR 240.17Ad–22(e)(23)(iii).

<sup>25</sup> 15 U.S.C. 78q–1(b)(3)(I).

<sup>26</sup> 15 U.S.C. 78q–1(b)(3)(D).

<sup>27</sup> 15 U.S.C. 78q–1(b)(3)(I).

<sup>28</sup> *Id.*

on competition that is created by the proposed rule changes to the fees associated with CNS fails that are more than 30 days would be necessary and appropriate in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act.<sup>29</sup>

NSCC believes that the proposed rule changes to promote efficient market behavior would be necessary in furtherance of the purposes of the Act because the Rules must provide for the equitable allocation of reasonable dues, fees, and other charges among its participants.<sup>30</sup> As described above, NSCC believes that the proposed rule changes would result in fees that are equitably allocated (by imposing the fees on all Members with CNS fails more than 30 days) and would result in reasonable fees (by increasing fees to the extent they would serve as meaningful deterrents to Members having CNS fails that are more than 30 days). As such, NSCC believes the proposed rule changes to promote efficient market behavior would be necessary in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act.<sup>31</sup>

NSCC believes any burden on competition that is created by the proposed rule changes to promote efficient market behavior would also be appropriate in furtherance of the purposes of the Act. NSCC believes that the proposed rule changes would encourage Members to address CNS fails that are more than 30 days. Reducing the number of CNS fails that are more than 30 days would, NSCC believes, promote the prompt and accurate clearance and settlement of securities transactions. As such, NSCC believes the proposed rule changes to promote efficient market behavior would be appropriate in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act.<sup>32</sup>

NSCC does not believe the proposed rule changes to reduce the complexity of the Fee Structure (other than the proposed rule change to modify the trade recording fee for foreign security trades) and make technical and conforming changes, as discussed above in Items II(A)(1)(ii)(A) and (D), respectively, would impact competition.<sup>33</sup> These changes would apply equally to all Members and would not affect Members' rights and obligations. As such, NSCC believes

these proposed rule changes would not have any impact on competition.

*(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments relating to this proposed rule change have not been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

**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<sup>34</sup> and paragraph (f) of Rule 19b-4 thereunder.<sup>35</sup> At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NSCC-2018-011 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR-NSCC-2018-011. 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 NSCC and on DTCC's website (<http://dtcc.com/legal/sec-rule-filings.aspx>). 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-NSCC-2018-011 and should be submitted on or before January 4, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>36</sup>

**Eduardo A. Aleman,**  
Deputy Secretary.

[FR Doc. 2018-27080 Filed 12-13-18; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[SEC File No. 270-264, OMB Control No. 3235-0341]

**Submission for OMB Review; Comment Request**

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736.

Extension:

Rule 17Ad-4(b) & (c)

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") is soliciting comments on the existing collection of information provided for in the following rule: Rule 17Ad-4(b) & (c) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) ("Exchange Act").

Rule 17Ad-4(b) & (c) (17 CFR 240.17Ad-4) is used to document when transfer agents are exempt, or no longer exempt, from the minimum performance standards and certain

<sup>29</sup> *Id.*

<sup>30</sup> 15 U.S.C. 78q-1(b)(3)(D).

<sup>31</sup> 15 U.S.C. 78q-1(b)(3)(I).

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>35</sup> 17 CFR 240.19b-4(f).

<sup>36</sup> 17 CFR 200.30-3(a)(12).

recordkeeping provisions of the Commission's transfer agent rules. Pursuant to Rule 17Ad-4(b), if the Commission or the Office of the Comptroller of the Currency ("OCC") is the appropriate regulatory agency ("ARA") for an exempt transfer agent, that transfer agent is required to prepare and maintain in its possession a notice certifying that it is exempt from certain performance standards and recordkeeping and record retention provisions of the Commission's transfer agent rules. This notice need not be filed with the Commission or OCC. If the Board of Governors of the Federal Reserve System ("Fed") or the Federal Deposit Insurance Corporation ("FDIC") is the transfer agent's ARA, that transfer agent must prepare a notice and file it with the Fed or FDIC.

Rule 17Ad-4(c) sets forth the conditions under which a registered transfer agent loses its exempt status. Once the conditions for exemption no longer exist, the transfer agent, to keep the ARA apprised of its current status, must prepare, and file if the ARA for the transfer agent is the Fed or the FDIC, a notice of loss of exempt status under paragraph (c). The transfer agent then cannot claim exempt status under Rule 17Ad-4(b) again until it remains subject to the minimum performance standards for non-exempt transfer agents for six consecutive months.

ARAs use the information contained in the notices required by Rules 17Ad-4(b) and 17Ad-4(c) to determine whether a registered transfer agent qualifies for the exemption, to determine when a registered transfer agent no longer qualifies for the exemption, and to determine the extent to which that transfer agent is subject to regulation.

The Commission estimates that approximately 10 registered transfer agents each year prepare or file notices in compliance with Rules 17Ad-4(b) and 17Ad-4(c). The Commission estimates that each such registered transfer agent spends approximately 1.5 hours to prepare or file such notices for an aggregate total annual burden of 15 hours (1.5 hours times 10 transfer agents). The Commission staff estimates that compliance staff work at registered transfer agents results in an internal cost of compliance, at an estimated hourly wage of \$283, of \$424.5 per year per transfer agent (1.5 hours × \$283 per hour = \$424.5 per year). Therefore, the aggregate annual internal cost of compliance for the approximate 10 transfer agents annually preparing or filing notices pursuant to Rules 17Ad-4(b) and 17Ad-4(c) is approximately \$4,245 (\$424.5 × 10 = \$4,245).

This rule does not involve the collection of confidential information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: [www.reginfo.gov](http://www.reginfo.gov). Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: [Lindsay.M.Abate@omb.eop.gov](mailto:Lindsay.M.Abate@omb.eop.gov); and (ii) Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549, or by sending an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov). Comments must be submitted to OMB within 30 days of this notice.

Dated: December 10, 2018.

**Eduardo A. Aleman,**  
*Deputy Secretary.*

[FR Doc. 2018-27090 Filed 12-13-18; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84772; File No. SR-NYSEArca-2018-77]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change To Amend Rule 7.44-E, the Exchange's Retail Liquidity Program

December 10, 2018.

On October 26, 2018, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend Exchange Rule 7.44-E, which sets forth the Exchange's Retail Liquidity Program. The proposed rule change was published for comment in the **Federal Register** on November 14, 2018.<sup>3</sup> The Commission has received no comment letters on the proposed rule change.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 84547 (Nov. 7, 2018), 83 FR 56890.

Section 19(b)(2) of the Act<sup>4</sup> 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 December 29, 2018. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider this proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,<sup>5</sup> designates February 12, 2019, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR-NYSEArca-2018-77).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>6</sup>

**Eduardo A. Aleman,**  
*Deputy Secretary.*

[FR Doc. 2018-27082 Filed 12-13-18; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-641, OMB Control No. 3235-0685]

### Submission for OMB Review; Comment Request

*Upon Written Request, Copies Available From:* U.S. Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736.

Extension:

Rules 3a68-2 and 3a68-4(c)

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("SEC") has submitted to the Office of Management and Budget ("OMB") a request for approval of extension of the previously

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> *Id.*

<sup>6</sup> 17 CFR 200.30-3(a)(31).



approved collection of information provided for the following rules: Rules 3a68–2 and 3a68–4(c) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 3a68–2 creates a process for interested persons to request a joint interpretation by the SEC and the Commodity Futures Trading Commission (“CFTC”) (together with the SEC, the “Commissions”) regarding whether a particular instrument (or class of instruments) is a swap, a security-based swap, or both (*i.e.*, a mixed swap). Under Rule 3a68–2, a person provides to the Commissions a copy of all material information regarding the terms of, and a statement of the economic characteristics and purpose of, each relevant agreement, contract, or transaction (or class thereof), along with that person’s determination as to whether each such agreement, contract, or transaction (or class thereof) should be characterized as a swap, security-based swap, or both (*i.e.*, a mixed swap). The Commissions also may request the submitting person to provide additional information.

The SEC expects 25 requests pursuant to Rule 3a68–2 per year. The SEC estimates the total paperwork burden associated with preparing and submitting each request would be 20 hours to retrieve, review, and submit the information associated with the submission. This 20 hour burden is divided between the SEC and the CFTC, with 10 hours per response regarding reporting to the SEC and 10 hours of response regarding third party disclosure to the CFTC.<sup>1</sup> The SEC estimates this would result in an aggregate annual burden of 500 hours (25 requests × 20 hours/request).

The SEC estimates that the total costs resulting from a submission under Rule 3a68–2 would be approximately \$12,000 for outside attorneys to retrieve, review, and submit the information associated with the submission. The SEC estimates this would result in aggregate costs each year of \$300,000 (25 requests × 30 hours/request × \$400).

Rule 3a68–4(c) establishes a process for persons to request that the Commissions issue a joint order permitting such persons (and any other person or persons that subsequently lists, trades, or clears that class of mixed swap) to comply, as to parallel provisions only, with specified parallel provisions of either the Commodity Exchange Act (“CEA”) or the Securities Exchange Act of 1934 (“Exchange Act”), and related rules and regulations

(collectively “specified parallel provisions”), instead of being required to comply with parallel provisions of both the CEA and the Exchange Act.

The SEC expects ten requests pursuant to Rule 3a68–4(c) per year. The SEC estimates that nine of these requests will have also been made in a request for a joint interpretation pursuant to Rule 3a68–2, and one will not have been. The SEC estimates the total burden for the one request for which the joint interpretation pursuant to 3a68–2 was not requested would be 30 hours, and the total burden associated with the other nine requests would be 20 hours per request because some of the information required to be submitted pursuant to Rule 3a68–4(c) would have already been submitted pursuant to Rule 3a68–2. The burden in both cases is evenly divided between the SEC and the CFTC.

The SEC estimates that the total costs resulting from a submission under Rule 3a68–4(c) would be approximately \$20,000 for the services of outside attorneys to retrieve, review, and submit the information associated with the submission of the one request for which a request for a joint interpretation pursuant to Rule 3a68–2 was not previously made (1 request × 50 hours/request × \$400). For the nine requests for which a request for a joint interpretation pursuant to Rule 3a68–2 was previously made, the SEC estimates the total costs associated with preparing and submitting a party’s request pursuant to Rule 3a68–4(c) would be \$6,000 less per request because, as discussed above, some of the information required to be submitted pursuant to Rule 3a68–4(c) already would have been submitted pursuant to Rule 3a68–2. The SEC estimates this would result in an aggregate cost each year of \$126,000 for the services of outside attorneys (9 requests × 35 hours/request × \$400).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: [www.reginfo.gov](http://www.reginfo.gov). Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: [Lindsay.M.Abate@omb.eop.gov](mailto:Lindsay.M.Abate@omb.eop.gov); and (ii) Charles Riddle, Acting Director/Chief Information Officer, Securities and

Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549, or by sending an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov). Comments must be submitted to OMB within 30 days of this notice.

Dated: December 10, 2018.

**Eduardo A. Aleman,**  
*Deputy Secretary.*

[FR Doc. 2018–27089 Filed 12–13–18; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–401, OMB Control No. 3235–0459]

### Proposed Collection; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:  
Rule 3a–4.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the “Commission”) is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 3a–4 (17 CFR 270.3a–4) under the Investment Company Act of 1940 (15 U.S.C. 80a) (“Investment Company Act” or “Act”) provides a nonexclusive safe harbor from the definition of investment company under the Act for certain investment advisory programs. These programs, which include “wrap fee” programs, generally are designed to provide professional portfolio management services on a discretionary basis to clients who are investing less than the minimum investments for individual accounts usually required by the investment adviser but more than the minimum account size of most mutual funds. Under wrap fee and similar programs, a client’s account is typically managed on a discretionary basis according to pre-selected investment objectives. Clients with similar investment objectives often receive the same investment advice and may hold the same or substantially similar securities in their accounts. Because of this similarity of management, some of these investment advisory programs may meet the

<sup>1</sup> The burdens imposed by the CFTC are included in this collection of information.

definition of investment company under the Act.

In 1997, the Commission adopted rule 3a–4, which clarifies that programs organized and operated in accordance with the rule are not required to register under the Investment Company Act or comply with the Act's requirements.<sup>1</sup> These programs differ from investment companies because, among other things, they provide individualized investment advice to the client. The rule's provisions have the effect of ensuring that clients in a program relying on the rule receive advice tailored to the client's needs.

For a program to be eligible for the rule's safe harbor, each client's account must be managed on the basis of the client's financial situation and investment objectives and in accordance with any reasonable restrictions the client imposes on managing the account. When an account is opened, the sponsor<sup>2</sup> (or its designee) must obtain information from each client regarding the client's financial situation and investment objectives, and must allow the client an opportunity to impose reasonable restrictions on managing the account.<sup>3</sup> In addition, the sponsor (or its designee) must contact the client annually to determine whether the client's financial situation or investment objectives have changed and whether the client wishes to impose any reasonable restrictions on the management of the account or reasonably modify existing restrictions. The sponsor (or its designee) must also notify the client quarterly, in writing, to contact the sponsor (or its designee) regarding changes to the client's financial situation, investment objectives, or restrictions on the account's management.

Additionally, the sponsor (or its designee) must provide each client with a quarterly statement describing all activity in the client's account during the previous quarter. The sponsor and

personnel of the client's account manager who know about the client's account and its management must be reasonably available to consult with the client. Each client also must retain certain indicia of ownership of all securities and funds in the account.

The Commission staff estimates that 19,618,731 clients participate each year in investment advisory programs relying on rule 3a–4.<sup>4</sup> Of that number, the staff estimates that 3,531,372 are new clients and 16,087,359 are continuing clients.<sup>5</sup> The staff estimates that each year the investment advisory program sponsors' staff engage in 1.5 hours per new client and 1 hour per continuing client to prepare, conduct and/or review interviews regarding the client's financial situation and investment objectives as required by the rule.<sup>6</sup> Furthermore, the staff estimates that each year the investment advisory program sponsors' staff spends 1 hour per client to prepare and mail quarterly client account statements, including notices to update information.<sup>7</sup> Based on the estimates above, the Commission estimates that the total annual burden of the rule's paperwork requirements is 41,003,148 hours.<sup>8</sup>

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of

the costs of Commission rules and forms. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burdens of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, C/O Candace Kenner, 100 F Street NE, Washington, DC 20549; or send an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Dated: December 10, 2018.

**Eduardo A. Aleman,**  
Deputy Secretary.

[FR Doc. 2018–27094 Filed 12–13–18; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**SEC File No. 270–774, OMB Control No. 3235–0726]**

### Proposed Collection; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

#### Extension:

Rules 300–304 of Regulation Crowdfunding (Intermediaries).

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (“PRA”) (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (“Commission”) is soliciting comments on the collection of information provided for Rule 17Ab2–1 (17 CFR 240.17Ab2–1) and Form CA–1: Registration of Clearing Agencies (17 CFR 249b.200) under the Securities Exchange Act of 1934 (“Exchange Act”) (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection

<sup>1</sup> Status of Investment Advisory Programs Under the Investment Company Act of 1940, Investment Company Act Rel. No. 22579 (Mar. 24, 1997) [62 FR 15098 (Mar. 31, 1997)] (“Adopting Release”). In addition, there are no registration requirements under section 5 of the Securities Act of 1933 for programs that meet the requirements of rule 3a–4. See 17 CFR 270.3a–4, introductory note.

<sup>2</sup> For purposes of rule 3a–4, the term “sponsor” refers to any person who receives compensation for sponsoring, organizing or administering the program, or for selecting, or providing advice to clients regarding the selection of, persons responsible for managing the client's account in the program.

<sup>3</sup> Clients specifically must be allowed to designate securities that should not be purchased for the account or that should be sold if held in the account. The rule does not require that a client be able to require particular securities be purchased for the account.

<sup>4</sup> These estimates are based on an analysis of the number of individual clients from Form ADV Item 5D(a)(1) and (b)(1) of advisers that report they provide portfolio management to wrap programs as indicated in Form ADV Item 5I(2)(b) and (c), and the number of individual clients of advisers that identify as internet advisers in Form ADV Item 2A(11). From analysis comparing reported individual client assets in Form ADV Item 5D(a)(3) and 5D(b)(3) to reported wrap portfolio manager assets in Form ADV Item 5I(2)(b) and (c), we discount the estimated number of individual clients of non-internet advisers providing portfolio management to wrap programs by 10%. These estimates are based on the number of new clients expected due to average year-over-year growth in individual clients from Form ADV Item 5D(a)(1) and (b)(1) (about 8%) and an assumed rate of yearly client turnover of 10%.

<sup>5</sup> These estimates are based on the number of new clients expected due to average year-over-year growth in individual clients from Form ADV Item 5D(a)(1) and (b)(1) (about 8%) and an assumed rate of yearly client turnover of 10%.

<sup>6</sup> These estimates are based upon consultation with investment advisers that operate investment advisory programs that rely on rule 3a–4.

<sup>7</sup> The staff bases this estimate in part on the fact that, by business necessity, computer records already will be available that contain the information in the quarterly reports.

<sup>8</sup> This estimate is based on the following calculation: (16,087,359 continuing clients × 1 hour) + (3,531,372 new clients × 1.5 hours) + (19,618,731 total clients × (0.25 hours × 4 statements)) = 41,003,148 hours. We note that the breakdown of burden hours between professional and staff time discussed below may not equal the estimate of total burden hours due to rounding.

of information to the Office of Management and Budget (“OMB”) for extension and approval.

Rules 300–304 of Regulation Crowdfunding enumerate the requirements with which intermediaries must comply to participate in the offer and sale of securities in reliance on Section 4(a)(6) of the Securities Act of 1933 (“Section 4(a)(6)”). Rule 300 requires an intermediary to be registered with the Commission as a broker or as a funding portal and be a member of a registered national securities association.<sup>1</sup>

Rule 301 requires intermediaries to have a reasonable basis for believing that an issuer seeking to offer and sell securities in reliance on Section 4(a)(6) through the intermediary’s platform complies with the requirements in Section 4A(b) of the Securities Act and the related requirements in Regulation Crowdfunding. Rule 302 provides that no intermediary or associated person of an intermediary may accept an investment commitment in a transaction involving the offer or sale of securities made in reliance on Section 4(a)(6) until the investor has opened an account with the intermediary and the intermediary has obtained from the investor consent to electronic delivery of materials. Rule 303 requires an intermediary to make publicly available on its platform the information that an issuer of crowdfunding securities is required to provide to potential investors, in a manner that reasonably permits a person accessing the platform to save, download or otherwise store the information, for a minimum of 21 days before any securities are sold in the offering, during which time the intermediary may accept investment commitments. Rule 303 also requires intermediaries to comply with the requirements related to the maintenance and transmission of funds. An intermediary that is a registered broker is required to comply with the requirements of Rule 15c2–4 of the Securities Exchange Act of 1934 (“Exchange Act”) (Transmission or Maintenance of Payments Received in Connection with Underwritings).<sup>2</sup> An intermediary that is a registered funding portal must direct investors to transmit the money or other consideration directly to a qualified third party that has agreed in writing to hold the funds for the benefit of, and to promptly transmit or return the funds to, the

persons entitled thereto in accordance with Regulation Crowdfunding.

The rules also require intermediaries to implement and maintain systems to comply with the information disclosure, communication channels, and investor notification requirements. These requirements include providing disclosure about compensation at account opening (Rule 302), obtaining investor acknowledgements to confirm investor qualifications and review of educational materials (Rule 303), providing investor questionnaires (Rule 303), providing communication channels with third parties and among investors (Rule 303), notifying investors of investment commitments (Rule 303), confirming completed transactions (Rule 303) and confirming or reconfirming offering cancellations (Rule 304).

The Commission staff estimates that there are 62 intermediaries engaged in crowdfunding activity and therefore subject to Rules 300–304. The Commission staff estimates that annualized industry burden would be 15,621 hours to comply with Rules 300–304. This estimate is composed of a one-time burden for new intermediaries to comply with the rules and develop the platform and ongoing burdens associated with maintaining the platform. The Commission staff estimates that the costs associated with complying with Rules 300–304 are estimated to be approximately a total amount of \$5,772,327. These costs are composed of a one-time burden for new intermediaries to comply with the rules and develop the platform and ongoing burdens associated with maintaining the platform.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission’s estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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 in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549, or send an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Dated: December 10, 2018.

**Eduardo A. Aleman,**

*Deputy Secretary.*

[FR Doc. 2018–27093 Filed 12–13–18; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84778; File No. SR–CboeEDGX–2018–058]

### Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Amend Its Provision Related to Its Risk Monitor Mechanism

December 10, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> notice is hereby given that on November 30, 2018, Cboe EDGX Exchange, Inc. (the “Exchange” or “EDGX”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b–4(f)(6) thereunder.<sup>4</sup> 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

Cboe EDGX Exchange, Inc. (the “Exchange” or “EDGX”) proposes to amend its provision related to its Risk Monitor Mechanism. The text of the proposed rule change is provided in Exhibit 5.

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.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b–4(f)(6).

<sup>1</sup> Currently, FINRA is the only registered national securities association.

<sup>2</sup> 17 CFR 240.15c2–4.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

The Exchange proposes to amend Rule 21.16 which governs the Risk Monitor Mechanism.

#### Background

By way of background, the Risk Monitor Mechanism provides Users<sup>5</sup> with the ability to manage their order and execution risk. Particularly, Rule 21.16 provides that the System will maintain a counting program for each User. A User may configure a single counting program or multiple counting programs to govern its trading activity (*i.e.*, on a per port basis). The counting program counts executions, contract volume and notional value, within a specified time period established by each User ("specified time period") and on an absolute basis for the trading day ("absolute limits"). The specified time period will commence for an option when a transaction occurs in any series in such option. The counting program will also count a User's executions, contract volume and notional value across all options which a User trades ("Firm Category"). When the system determines that a User's Specified Engagement Trigger (*i.e.*, a volume trigger, notional trigger, count trigger and percentage trigger) has reached its established limit, the Risk Monitor Mechanism cancels or rejects such User's orders or quotes<sup>6</sup> in all series of the class and cancels or rejects any additional orders or quotes from the

User in the class until the counting program resets.

#### Proposed Rule Change

The Exchange proposes to amend Rule 21.16 to (i) adopt the Risk Monitor Mechanism rule language used by its affiliated exchange, Cboe C2 Exchange, Inc. ("C2") (ii) provide the ability for Users [sic] to configure limits applicable to a group of EFIDs, and (iii) adopt a new a new risk parameter.

#### Rule Harmonization

First, the Exchange proposes to harmonize its Risk Monitor Mechanism Rule to that of its affiliated Exchange, C2. Particularly, C2 Rule 6.14 governs, among other things, its Risk Monitor Mechanism functionality. The Exchange notes the functionality of the Risk Monitor Mechanism is substantively the same as the Risk Monitor Mechanism on EDGX. Indeed, the Exchange notes that C2 just recently adopted Rule 6.14 in connection with the technology migration of C2 onto the options platform of EDGX, and at such time conformed its previous Risk Monitor Mechanism functionality to the functionality that already existed on EDGX.<sup>7</sup> Although the functionality is substantively the same, the rule structure and terminology used in the EDGX and C2 rules differ. The Exchange wishes to provide harmonization with respect to this rule across the two exchanges and accordingly proposes to conform EDGX Rule 21.16 to C2 Rule 6.14(c)(5) (*i.e.*, delete current Rule 21.16 in its entirety with the exception of subparagraphs (d) and (e), which will be relocated as described below, and adopt in whole the language from the relevant provisions of C2 Rule 6.14). As noted above, the Exchange is also proposing substantive enhancements to its current functionality, which is described further below. The Exchange notes that C2 is simultaneously proposing the same Risk Monitor Mechanism enhancements and those enhancements are included in the new proposed conformed rule language.

First, the Exchange notes that proposed Rule 21.16 will not use the term "User", and instead will use the term "Member".<sup>8</sup> The Exchange notes

that the definition of User is broader than Member, as it specifically captures Sponsored Participants. The Exchange believes "Member" is the more appropriate term to use with respect to the Risk Monitor Mechanism as the rule describes how the functionality works with respect to Members, and not necessarily Sponsored Participants. The Exchange notes that it currently does not have any Sponsored Participants, and to the extent it expects to have any in the future, it will revise the rule as needed to incorporate how the Risk Monitor Mechanism would function with respect to Sponsored Participants. The Exchange notes that "User" will be referred to herein as "Member".

Next, in connection with adopting C2's Risk Monitor Mechanism Rule language, the Exchange notes that it will be eliminating the term "class" and replacing it with "underlying". Specifically, the Exchange notes that the Risk Monitor Mechanism is configured to count the risk parameters (referred to as "Specified Engagement Triggers" in current EDGX Rule 21.16) across underlying securities or indexes. As an example, any option related to Apple (AAPL), would be considered to have the same underlying. Accordingly, if a corporate action resulted in AAPL1, AAPL and APPL1 one [sic] would be considered to share the same underlying symbol AAPL. Only a single symbol-level rule for underlying AAPL would be configurable by the Risk Monitor Mechanism. The Exchange notes that the term "underlying" is also utilized in the Exchange's technical specification documents. The Exchange therefore believes underlying is a more accurate term to use.

The Exchange also intends to clarify and codify in the new rule language what occurs in the event a Member does not reactivate its ability to send quotes or orders after its configured risk parameter limits have been reached. Currently, EDGX Rule 21.16 explains how a Member may reset its counting periods. The proposed rule language includes a provision that provides that if the Exchange cancels all of a Member's quotes and orders resting in the Book, and the Member does not reactivate its ability to send quotes or orders, the block will be in effect only for the trading day that the Member reached its limits. The Exchange notes this is not a substantive change, but rather is current practice, and that its affiliated Exchange, Cboe Options,

Exchange. The Exchange notes that corresponding C2 Rule 6.14(c)(5) will use the term "TPH", as "Member" is not a defined term used by C2.

<sup>5</sup> See Exchange Rule 1.5(ee). The term "User" means any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3. As discussed below, the Exchange is proposing to replace references to "Users" in Rule 21.16 with "Member".

<sup>6</sup> See *infra* discussion accompanying footnotes 6–7 [sic].

<sup>7</sup> See Securities Exchange Act Release No. 83214 (May 11, 2018), 83 FR 22796 (May 16, 2018) (SR–C2–2018–005).

<sup>8</sup> See Exchange Rule 1.5(n). The term "Member" shall mean any registered broker or dealer that has been admitted to membership in the Exchange. A Member will have the status of a "member" of the Exchange as that term is defined in Section 3(a)(3) of the Act. Membership may be granted to a sole proprietor, partnership, corporation, limited liability company or other organization which is a registered broker or dealer pursuant to Section 15 of the Act, and which has been approved by the

includes similar language in its rules.<sup>9</sup> The Exchange believes adding this provision to the rules provides further transparency in its rules and reduces potential confusion as to what would happen in the situation where a Member fails to reset the counting program.

In connection with adopting C2's Risk Monitor Mechanism Rule language, the Exchange also proposes to include language regarding a reset limit. Particularly, C2 Rule 6.14(c)(5)(d)(iii) [sic] (which will be renumbered to C2 Rule 6.14(c)(5)(d)(iv) [sic]) provides that the Exchange may restrict the number of Member underlying, EFID and EFID Group resets per second. The Exchange believes adding this provision to its rules provides transparency in the rules that the Exchange can impose such a restriction. The Exchange notes this is not a substantive change, but rather current practice. The Exchange believes adding this provision to the rules provides further transparency in its rules and reduces potential confusion as to whether the Exchange may restrict resets.

In connection with the harmonization of C2 Rule [sic] 6.14, the Exchange notes that certain terminology is also changing. For example, current EDGX Rule 21.16, provides that the counting program counts a Member's executions, contract volume and notional value across all options which a Member trades ("Firm Category"). Going forward, this concept will be restated to provide generally that the System will count the risk parameters across all underlyings of an EFID ("EFID limit"). The Exchange reiterates the concept is the same, but the language conforms to C2 rules and makes the rule easier to read.

The Exchange also proposes to adopt a definition of EFID as it proposes to reference EFIDs in proposed EDGX Rule 21.16. Particularly, the Exchange proposes to add Rule 21.1(k) to define and describe EFIDs. Specifically, a Member may obtain one or more EFIDs from the Exchange (in a form and manner determined by the Exchange). The Exchange assigns an EFID to a Member, which the System uses to identify the Member and clearing number for the execution of orders and quotes submitted to the System with that EFID.<sup>10</sup> Each EFID corresponds to a single Member and a single clearing number of a Clearing Member with the

Clearing Corporation. A Member may obtain multiple EFIDs, which may be for the same or different clearing numbers. A Member may only identify for any of its EFIDs the clearing number of a Clearing Member that is a Designated Give Up or Guarantor of the Trading Permit Holder as set forth in Rule 21.12. A Member is able (in a form and manner determined by the Exchange) to designate which of its EFIDs may be used for each of its ports. If a Member submits an order or quote through a port with an EFID not enabled for that port, the System cancels or rejects the order or quote. The proposed rule change regarding EFIDs is not a substantive change but rather codifies current functionality and mirrors current C2 Rule 6.8(b). The Exchange believes including a description of the use of EFIDs in the Rules adds transparency to the Rules.

The Exchange also notes that the new harmonized rule language incorporates the use of the term "quote" and "quotes".<sup>11</sup> Currently, however, when describing what happens when a Specified Engagement Trigger is reached, Rule 21.16(b)(i) only references what happens to a Member's "orders". The Exchange notes however, that the term "order" as is used in Rule 21.16 was intended to capture both orders and quotes. Particularly, an "order" is defined as a firm commitment to buy or sell option contracts submitted to the System by a Member, and a "quote" is defined as a bid or offer entered by a Market-Maker as a firm order that updates the Market-Maker's previous bid or offer, if any.<sup>12</sup> Indeed, the Exchange notes that the proposed reference to "quote" and "quotes" is not a substantive change to how the Risk Monitor Mechanism currently works or will work going forward. Accordingly, the Exchange believes incorporating the term "quote" and "quotes" alleviates confusion and better reflects how the Risk Monitor Mechanism operates (*i.e.*, both orders and quotes, as defined, can be affected). Similarly, the Exchange believes the proposal to eliminate the references to a "User's order size" and "Market-Maker's quote size" with respect to how the percentage trigger is calculated is not a substantive change. The Exchange notes the trigger is calculated the same on EDGX and C2, and although proposed EDGX Rule 21.16(a)(iv) doesn't reference orders and Market-Maker quotes in particular, the calculation will not be changing and the

Exchange doesn't believe a reference to orders and Market-Maker quote size in particular under this provision is necessary.

As noted above, the Exchange is not proposing to eliminate subparagraphs (d) or (e) of current EDGX Rule 21.16, but rather relocate these provisions. The Exchange proposes to first relocate the contents of current subparagraph (d) to new subparagraph (d)(vi) of proposed EDGX Rule 21.16 and clarify that the proposed provision governs "other resets" (*i.e.*, resets that are not a result from a limit being reached).<sup>13</sup> Particularly, the provision provides the System will reset the counting period for absolute limits when a Member refreshes its risk limit thresholds. The System will also reset the counting program and commence a new specified time period when (i) a previous specified time period has expired and a transaction occurs in any series of an underlying or (ii) a Member refreshes its risk limit thresholds prior to the expiration of the specified time period. The Exchange proposes to keep this language as it provides transparency in the rules as to when other resets occur without limits being reached. Lastly, the Exchange notes that it proposes to relocate current subparagraph (e) to new subparagraph (f). Particularly, new subparagraph (f) provides that a Member may also engage the Risk Monitor Mechanism to cancel resting bids and offers, as well as subsequent orders as set forth in EDGX Rule 22.11.<sup>14</sup>

#### EFID Groups

The Exchange next proposes to provide in the rules that in addition to underlying limits and EFID limits, the System will be able to count each of the risk parameters across all underlyings for a group of EFIDs ("EFID Group") ("EFID Group limit").<sup>15</sup> Similar to when a underlying limit or EFID limit are reached, when a Member's EFID Group limit is reached, the Risk Monitor Mechanism will cancel or reject such Member's orders or quotes in all underlying and cancel or reject any additional orders or quotes from any EFID within that EFID Group in all underlyings until the counting program

<sup>13</sup> The Exchange notes that C2 is also proposing to add this provision to its C2 Rule 6.14 in order to provide further transparency in its rules governing the Risk Monitor Mechanism.

<sup>14</sup> The Exchange notes that C2 is proposing to also add this provision to its C2 Rule 6.14 in order to provide further transparency in its rules governing the Risk Monitor Mechanism.

<sup>15</sup> An EFID may not belong to more than one EFID Group. The Exchange notes that the Members determine how many, if any, EFID Groups to establish and determine which EFIDs belong to a particular EFID Group, if any.

<sup>9</sup> See Cboe Options Rule 8.18.

<sup>10</sup> The Exchange notes that currently EDGX's rules refer only to the term "MPID", which is a Member's market participant identifier used for equities trading. The Exchange does not utilize MPIDs on its options platform and uses EFIDs instead. EFIDs are generally equivalent to MPIDs.

<sup>11</sup> See subparagraph (b), (c) and (d) of proposed EDGX Rule 21.16.

<sup>12</sup> See EDGX Rules 16.1(a)(42) and (51) and 21.1(c).

resets. The System will not accept new orders or quotes from any EFID within an EFID Group after an EFID Group limit is reached until the Member manually notifies the Trade Desk to reset the counting program for the EFID Group, unless the Member instructs the Exchange to permit it to reset the counting program by submitting an electronic message to the System. The Exchange believes each Member is in the best position to determine risk settings appropriate for its firm based on its trading activity and business needs and that it may be based on a single EFID or EFID Group(s). The Exchange notes that its affiliate Exchange, Cboe Exchange, Inc. ("Cboe Options") similarly allows its members to set similar risk parameters at the acronym-level (which is similar to an EFID) or firm level (similar to an EFID Group).<sup>16</sup>

#### New Risk Parameter

The Exchange lastly proposes to adopt a new risk parameter. Specifically, under the proposed functionality, a Member may specify a maximum number of times that the risk parameters (*i.e.*, volume, notional, count and/or percentage) are reached over a specified interval or absolute period ("risk trips"). When a risk trip limit has been reached, the Risk Monitor Mechanism will cancel or reject a Member's orders or quotes pursuant to subparagraph (b) of Rule 21.16. The Exchange notes that a similar risk parameter (*i.e.*, a parameter based on the number of risk "incidents" that occur over a specified time) is available on its affiliate Exchange, Cboe Options.<sup>17</sup> The Exchange believes the proposed changes to its Risk Monitor Mechanism rule sufficiently allows Members to adjust and adopt parameter inputs in accordance with their business models and risk management needs.

#### 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.<sup>18</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>19</sup> 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)<sup>20</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

First, the Exchange believes its proposal to harmonize Rule 21.16 to C2 Rule 6.14 provides uniformity across affiliated exchange rules that govern the same functionality and makes the rule easier to read, which reduces potential confusion. The Exchange also proposes to mirror C2 Rule 6.14 because it believes consistent rules will increase the understanding of the Exchange's operations for Members that are also participants on C2. As discussed above, notwithstanding the proposal to adopt new terminology and/or the absence of certain references, the Exchange intends no substantive changes to the meaning or application of Rule 21.16 other than what is described above with respect to EFID Groups and the new risk trips parameter. Particularly, the Exchange believes the adoption of the definition of "EFID" provides transparency in the rules and alleviates confusion, as the Exchange references EFIDs multiple times throughout proposed Rule 21.16 and utilizes EFIDs generally on the Exchange with respect to its options platform. The Exchange notes the proposed definition is substantively the same as the definition of EFIDs under C2's rules.<sup>21</sup> The Exchange believes the use of "quote" and "quotes" also alleviates confusion as the current Risk Monitor Mechanism in fact affects both orders and quotes, as defined, and was intended to cover both a Member's orders and Market Maker quotes. Similarly, the Exchange believes using the term "underlying" instead of "class" and "Member" instead of "user" alleviates potential confusion as the proposed terms more accurately reflect how the Risk Monitor Mechanism operates.

The Exchange believes the rule changes to codify current practice alleviates potential confusion, provides transparency in the rules and makes the rules easier to read. For example,

providing language regarding (i) a Member's failure to reset or initiate a reset of the counting program and (ii) the Exchange's ability to restrict resets, provides transparency in the rules as to what occurs in those situations, harmonizes rule language with that of the Exchange's affiliated Exchanges, and reduces potential confusion. The alleviation of confusion removes impediments to, and perfects the mechanism of, a free and open market and a national market system, and, in general, protects investors and the public interest.

The Exchange believes providing Members the ability to configure certain risk parameters across underlyings for an EFID Group is also appropriate because it permits a Member to protect itself from inadvertent exposure to excessive risk on an additional level (*i.e.*, on an EFID group-level, not just underlying- or EFID-level). Reducing such risk will enable Members to enter quotes and orders with protection against inadvertent exposure to excessive risk, which in turn will benefit investors through increased liquidity for the execution of their orders. Such increased liquidity benefits investors because they may receive better prices and because it may lower volatility in the options market. The Exchange also believes each Member is in the best position to determine risk settings appropriate for its firm based on its trading activity and business needs and that that may be based on an EFID Group(s). Additionally, as discussed above, Cboe Options similarly allows its members to set risk parameters at the acronym-level (which is similar to an EFID) or firm-level (similar to an EFID Group).<sup>22</sup>

Lastly, the Exchange believes the proposal to adopt the new risk parameter based on number of times a risk parameter or group of risk parameters are reached will provide Members with an additional tool for managing risks. Furthermore, as noted above, the Exchange's affiliated exchange offers similar functionality.<sup>23</sup> Overall, the proposed rule change provides Members more protections that reduce the risks from potential system errors and market events. As a result, the proposed changes, including the new risk parameter for the Risk Monitor Mechanism, have the potential to promote just and equitable principles of trade. Additionally, the proposed changes apply to all Members.

<sup>16</sup> See Cboe Options Rule 8.18.

<sup>17</sup> See Cboe Options Rule 8.18, which provides that a Hybrid Market Maker or a TPH Organization may specify a maximum number of Quote Risk Monitor Mechanism ("QRM") QRM Incidents on an Exchange-wide basis.

<sup>18</sup> 15 U.S.C. 78f(b).

<sup>19</sup> 15 U.S.C. 78f(b)(5).

<sup>20</sup> *Id.*

<sup>21</sup> See C2 Rule 6.8(b).

<sup>22</sup> See Cboe Options Rule 8.18.

<sup>23</sup> See Cboe Options Rule 8.18.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the Exchange believes that the proposed changes with respect to its Risk Monitor Mechanism help promote fair and orderly markets and provide clarity and transparency the Rule. For example, the proposed rule change adds an additional risk control parameter and flexibility to help further prevent potentially erroneous executions, which benefits all market participants. The proposed changes apply uniformly to all Members and the Exchange notes that the proposed changes apply to all quotes and orders in the same manner. Additionally, the Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed enhancements apply only to trading on the Exchange. Additionally, the Exchange notes that it is voluntary for the Members to determine whether to make use of the new enhancements of the Risk Monitor Mechanism. To the extent that the proposed changes may make the Exchange a more attractive trading venue for market participants on other exchanges, such market participants may elect to become Exchange market participants.

### *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.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not:

A. significantly affect the protection of investors or the public interest;  
B. impose any significant burden on competition; and

C. 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<sup>24</sup> and Rule 19b-4(f)(6)<sup>25</sup> thereunder.<sup>26</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>27</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>28</sup> 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 to provide Members with additional tools and greater flexibility for managing their potential risk as soon as possible. Accordingly, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal as operative upon filing.<sup>29</sup>

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 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](mailto:rule-comments@sec.gov). Please include File Number SR-CboeEDGX-2018-058 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange

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.

<sup>27</sup> 17 CFR 240.19b-4(f)(6).

<sup>28</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>29</sup> For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CboeEDGX-2018-058. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeEDGX-2018-058 and should be submitted on or before January 4, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>30</sup>

**Eduardo A. Aleman,**  
*Deputy Secretary.*

[FR Doc. 2018-27086 Filed 12-13-18; 8:45 am]

**BILLING CODE 8011-01-P**

### **SECURITIES AND EXCHANGE COMMISSION**

[SEC File No. 270-359, OMB Control No. 3235-0410]

### **Submission for OMB Review; Comment Request**

*Upon Written Request Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736.

Extension:

<sup>30</sup> 17 CFR 200.30-3(a)(12).

<sup>24</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>25</sup> 17 CFR 240.19b-4(f)(6).

<sup>26</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to



Rules 17h-1T and 17h-2T

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 ("PRA") (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for approval of extension of the previously approved collection of information provided for in Rules 17h-1T and 17h-2T (17 CFR 240.17h-1T and 17 CFR 240.17h-2T), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 17h-1T requires a covered broker-dealer to maintain and preserve records and other information concerning certain entities that are associated with the broker-dealer. This requirement extends to the financial and securities activities of the holding company, affiliates and subsidiaries of the broker-dealer that are reasonably likely to have a material impact on the financial or operational condition of the broker-dealer. Rule 17h-2T requires a covered broker-dealer to file with the Commission quarterly reports and a cumulative year-end report concerning the information required to be maintained and preserved under Rule 17h-1T.

The collection of information required by Rules 17h-1T and 17h-2T, collectively referred to as the "risk assessment rules," is necessary to enable the Commission to monitor the activities of a broker-dealer affiliate whose business activities are reasonably likely to have a material impact on the financial or operational condition of the broker-dealer. Without this information, the Commission would be unable to assess the potentially damaging impact of the affiliate's activities on the broker-dealer.

There are currently 285 respondents that must comply with Rules 17h-1T and 17h-2T. Each of these 285 respondents are estimated to require 10 hours per year to maintain the records required under Rule 17h-1T, for an aggregate estimated annual burden of 2,850 hours (285 respondents  $\times$  10 hours). In addition, each of these 285 respondents must make five annual responses under Rule 17h-2T. These five responses are estimated to require 14 hours per respondent per year for an aggregate estimated annual burden of 3,990 hours (285 respondents  $\times$  14 hours).

In addition, new respondents must draft an organizational chart required under Rule 17h-1T and establish a system for complying with the risk assessment rules. The staff estimates that drafting the required organizational

chart requires one hour and establishing a system for complying with the risk assessment rules requires three hours. Based on the reduction in the number of filers in recent years, the staff estimates there will be zero new respondents, and thus, a corresponding estimated burden of zero hours for new respondents. Thus, the total compliance burden per year is approximately 6,840 burden hours (2,850 hours + 3,990 hours).

The retention period for the recordkeeping requirement for the information, reports and records required under Rule 17h-1T is not less than three years. There is no specific retention period or recordkeeping requirement for Rule 17h-2T. The collection of information is mandatory. All information obtained by the Commission pursuant to the provisions of Rules 17h-1T and 17h-2T from a broker or dealer concerning a material associated person is deemed confidential information for the purposes of section 24(b) of the Exchange Act.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: [www.reginfo.gov](http://www.reginfo.gov). Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: [Lindsay.M.Abate@omb.eop.gov](mailto:Lindsay.M.Abate@omb.eop.gov); and (ii) Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549, or by sending an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov). Comments must be submitted to OMB within 30 days of this notice.

Dated: December 10, 2018.

**Eduardo A. Aleman,**

*Deputy Secretary.*

[FR Doc. 2018-27091 Filed 12-13-18; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33320; 812-14933]

### Pacific Global ETF Trust and Cadence Capital Management LLC

December 11, 2018.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice.

Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c-1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(f) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act. The requested order would permit (a) actively-managed series of certain open-end management investment companies ("Funds") to issue shares redeemable in large aggregations only ("Creation Units"); (b) secondary market transactions in Fund shares to occur at negotiated market prices rather than at net asset value ("NAV"); (c) certain Funds to pay redemption proceeds, under certain circumstances, more than seven days after the tender of shares for redemption; (d) certain affiliated persons of a Fund to deposit securities into, and receive securities from, the Fund in connection with the purchase and redemption of Creation Units; (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the Funds ("Funds of Funds") to acquire shares of the Funds; and (f) certain Funds ("Feeder Funds") to create and redeem Creation Units in-kind in a master-feeder structure.

**APPLICANTS:** Pacific Global ETF Trust ("Trust"), a Delaware statutory trust that will be registered under the Act as an open-end management investment company with multiple series, and Cadence Capital Management LLC ("Initial Adviser"), a Delaware limited liability company registered as an investment adviser under the Investment Advisers Act of 1940.

**FILING DATES:** The application was filed on July 24, 2018 and amended on November 21, 2018.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may

request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 31, 2018, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090; Applicants, 265 Franklin Street, 4th Floor, Boston, MA 02110-3113.

**FOR FURTHER INFORMATION CONTACT:** Christine Y. Greenlees, Senior Counsel, at (202) 551-6879, or Andrea Ottomanelli Magovern, Branch Chief, at (202) 551-6821 (Division of Investment Management, Chief Counsel's Office).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

### Summary of the Application

1. Applicants request an order that would allow Funds to operate as actively-managed exchange traded funds ("ETFs").<sup>1</sup> Fund shares will be purchased and redeemed at their NAV in Creation Units only. All orders to purchase Creation Units and all redemption requests will be placed by or through an "Authorized Participant," which will have signed a participant agreement with a broker-dealer registered under the Securities Exchange Act of 1934 ("Exchange Act") ("Distributor"). Shares will be listed and

traded individually on a national securities exchange, where share prices will be based on the current bid/offer market. Certain Funds may operate as Feeder Funds in a master-feeder structure. Any order granting the requested relief would be subject to the terms and conditions stated in the application.

2. Each Fund will consist of a portfolio of securities and other assets and investment positions ("Portfolio Instruments"). Each Fund will disclose on its website the identities and quantities of the Portfolio Instruments that will form the basis for the Fund's calculation of NAV at the end of the day.

3. Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified in the application, purchasers will be required to purchase Creation Units by depositing specified instruments ("Deposit Instruments"), and shareholders redeeming their shares will receive specified instruments ("Redemption Instruments"). The Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in the Fund's portfolio (including cash positions) except as specified in the application.

4. Because shares will not be individually redeemable, applicants request an exemption from section 5(a)(1) and section 2(a)(32) of the Act that would permit the Funds to register as open-end management investment companies and issue shares that are redeemable in Creation Units only.

5. Applicants also request an exemption from section 22(d) of the Act and rule 22c-1 under the Act as secondary market trading in shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus, and not at a price based on NAV. Applicants state that (a) secondary market trading in shares does not involve a Fund as a party and will not result in dilution of an investment in shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants represent that share market prices will be disciplined by arbitrage opportunities, which should prevent

shares from trading at a material discount or premium from NAV.

6. With respect to Funds that hold non-U.S. Portfolio Instruments and that effect creations and redemptions of Creation Units in kind, applicants request relief from the requirement imposed by section 22(e) in order to allow such Funds to pay redemption proceeds within fifteen calendar days following the tender of Creation Units for redemption. Applicants assert that the requested relief would not be inconsistent with the spirit and intent of section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds.

7. Applicants request an exemption to permit Funds of Funds to acquire Fund shares beyond the limits of section 12(d)(1)(A) of the Act; and the Funds, and any principal underwriter for the Funds, and/or any broker or dealer registered under the Exchange Act, to sell shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act. The application's terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over a Fund through control or voting power, or in connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii) overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A) and (B) of the Act.

8. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act to permit a person who is an affiliated person, as defined in section 2(a)(3) of the Act ("Affiliated Person"), or an affiliated person of an Affiliated Person ("Second-Tier Affiliate"), of the Funds, solely by virtue of certain ownership interests, to effectuate purchases and redemptions in-kind. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions of Creation Units will be the same for all purchases and redemptions and Deposit Instruments and Redemption Instruments will be valued in the same manner as those Portfolio Instruments currently held by the Funds. Applicants also seek relief from the prohibitions on affiliated transactions in section 17(a) to permit a Fund to sell its shares to and redeem its shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.<sup>2</sup>

<sup>1</sup> Applicants request that the order apply to the Initial Fund, as well as to future series of the Trust and any other existing or future open-end management investment companies or series thereof (each, included in the term "Fund"), each of which will operate as an actively-managed ETF. Any Fund will (a) be advised by the Initial Adviser or an entity controlling, controlled by, or under common control with the Initial Adviser (each of the foregoing and any successor thereto included in the term "Adviser"), and (b) comply with the terms and conditions of the application. For purposes of the requested Order, a "successor" is limited to an entity or entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

<sup>2</sup> The requested relief would apply to direct sales of shares in Creation Units by a Fund to a Fund of Funds and redemptions of those shares. Applicants, moreover, are not seeking relief from section 17(a)

The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the policies of the Fund of Funds and will be based on the NAVs of the Funds.

9. Applicants also request relief to permit a Feeder Fund to acquire shares of another registered investment company managed by the Adviser having substantially the same investment objectives as the Feeder Fund ("Master Fund") beyond the limitations in section 12(d)(1)(A) and permit the Master Fund, and any principal underwriter for the Master Fund, to sell shares of the Master Fund to the Feeder Fund beyond the limitations in section 12(d)(1)(B).

10. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

**Eduardo A. Aleman,**  
Deputy Secretary.

[FR Doc. 2018-27128 Filed 12-13-18; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84775; File No. SR-NYSE-2018-57]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Certain of Its Listing Fees

December 10, 2018.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on November 29, 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 certain of its listing fees. The proposed rule change is available on the Exchange's website at [www.nyse.com](http://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 certain of its listing fees set forth in Chapter 9 of the Manual, in each case

with effect from the beginning of the calendar year commencing on January 1, 2019.

The annual fee set forth in Section 902.03 of the Manual will increase from \$0.00108 per share to \$0.0011 per share for each of the following: A primary class of common shares (including Equity Investment Tracking Stocks); each additional class of common shares (including tracking stock), a primary class of preferred stock (if no class of common shares is listed); each additional class of preferred stock (whether the primary class is common or preferred stock); and each class of warrants. In addition, the minimum annual fee will be increased from \$65,000 to \$68,000 for each of (i) a primary class of common shares (including Equity Investment Tracking Stocks) and (ii) a primary class of preferred stock (if no class of common shares is listed).

The Exchange proposes to amend the annual fee schedule for structured products set forth in Section 902.05 of the Manual and for short term securities set forth in Section 902.06. In each case, the annual fee per share will increase from \$0.00108 to \$0.0011 per share. The minimum annual fee will increase from \$25,000 to \$35,000 for securities listed under Sections 902.05 and 902.06 (except for warrants to purchase equity securities, which will remain \$5,000). In addition, the Exchange proposes to amend the provision in Section 902.02 relating to the \$500,000 Total Maximum Fee by including annual fees paid for all structured products in calculating the Total Maximum Fee. The Exchange notes that retail debt securities are already included in the Total Maximum Fee calculation. Historically many listed structured products were financial products issued by banks and other financial institutions so there was a reasonable basis for excluding them from the benefits of the Total Maximum Fee provision. Today, however, most structured products listed on the Exchange are issued by listed companies for similar financing reasons to those for which they issue retail debt, so it is reasonable to treat them the same for purposes of the Total Maximum Fee calculation.

The Exchange proposes to make an adjustment to the Investment Management Entity Group Fee Discount set forth in Section 902.02 of the Manual. The Investment Management Entity Group Fee Discount is currently based on all annual and listing fees paid by the Investment Management Entity and its Eligible Portfolio Companies in the applicable calendar year. The Exchange proposes to amend the

for, and the requested relief will not apply to, transactions where a Fund could be deemed an Affiliated Person, or a Second-Tier Affiliate, of a Fund of Funds because an investment adviser to the Funds is also an investment adviser to a Fund of Funds.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

discount by applying it only to annual fees incurred as of January 1 of the applicable year.<sup>4</sup> The current approach is logistically difficult for Exchange staff and the benefitting companies, as the size and proportionate share of the discount received by each company cannot be calculated until year-end, as it must reflect the effect of supplemental listing fees incurred for issuances of new shares during the course of the year in addition to annual fees. A discount based on annual fee bills incurred on January 1 will be more transparent and predictable and will enable the Exchange to reduce the benefitting companies' bills at the beginning of the year rather than charging them in full and giving them a credit for the discount at year-end. In connection with this modification, the Exchange also proposes to modify the manner in which a company qualifies as an Eligible Portfolio Company to reflect the fact that the benefits—and therefore Eligible Portfolio Company Status—will be determined at the beginning of the applicable year. As such, for calendar 2019 and subsequent years, a company will be an Eligible Portfolio Company if it was listed on the Exchange as of the first trading day of such calendar year. In order to qualify for the Investment Management Entity Group Fee Discount in calendar 2019 or any subsequent year, an issuer must submit satisfactory proof to the Exchange no later than the first trading day of such calendar year that it meets the ownership requirements specified above.<sup>5</sup>

As described below, the Exchange proposes to make the aforementioned fee increases to better reflect the Exchange's costs related to listing equity securities and the corresponding value of such listing to issuers.

The Exchange also proposes to remove a number of references in Chapter 9 to fees that are no longer applicable as they were superseded by new fee rates specified in the rule text or refer to fees that are no longer applicable.

<sup>4</sup> The Investment Management Entity Group Fee Discount is limited to \$500,000 per year for any Investment Management Entity and its Eligible Portfolio Companies and, in the Exchange's experience, each group of companies utilizing the discount has benefited from the maximum \$500,000 amount. The Exchange expects that all groups of companies utilizing the discount will continue to benefit from the maximum discount in the future based solely on their annual fee obligations.

<sup>5</sup> Under the current rule, a company qualifies for the Investment Management Entity Group Fee Discount in any calendar year by submitting satisfactory proof to the Exchange no later than December 31 that it has met the ownership requirements specified above for the entire period between January 1 and September 30 of that year.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of Section 6(b)(4)<sup>7</sup> of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>8</sup> in that it is designed 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 and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that it is not unfairly discriminatory and represents an equitable allocation of reasonable fees to amend Chapter Nine of the Manual to increase the various listing fees as set forth above because of the increased costs incurred by the Exchange since it established the current rates. In that regard, the Exchange notes that its general costs have increased since its most recent fee adjustments, including due to price inflation. In addition, the Exchange continues to improve and increase the services it provides to listed companies. These improvements include the continued development and enhancement of an interactive web-based platform designed to improve communication between the Exchange and listed companies, the availability to listed companies of the Exchange's new state-of-the-art conference facilities at 11 Wall Street, and continued development of an investor relations tool available to all listed companies which provides companies with information enabling them to better understand the trading and ownership of their securities and the cost of providing content for inclusion in that tool.

The inclusion of all structured products in the Total Maximum Fee calculation is not unfairly discriminatory and represents an equitable allocation of reasonable fees, as retail debt securities are already included in the Total Maximum Fee calculation. Most listed structured products are issued by listed companies

for similar financing reasons to those for which they issue retail debt, so it is reasonable, equitable and not unfairly discriminatory to treat them the same for purposes of the Total Maximum Fee calculation.

The adjustments to the Investment Management Entity Group Fee Discount are not unfairly discriminatory and represent an equitable allocation of reasonable fees, because a discount based on annual fee bills incurred on January 1 will be more transparent and predictable and will enable the Exchange to reduce the benefitting companies' bills at the beginning of the year rather than charging them in full and giving them a credit for the discount at year-end. The proposed amendment is not unfairly discriminatory because the eligible fees and the test for receiving the benefits of the discount will be the same for all listed companies.

The above fee changes are not unfairly discriminatory because the same fee schedule will apply to all listed issuers. Further, the Exchange operates in a competitive environment and its fees are constrained by competition in the marketplace. Other venues currently list all of the categories of securities covered by the proposed fees and if a company believes that the Exchange's fees are unreasonable it can decide either not to list its securities or to list them on an alternative venue.

The proposed removal of text relating to fees that are no longer applicable is ministerial in nature and has no substantive effect.

## *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to ensure that the fees charged by the Exchange accurately reflect the services provided and benefits realized by listed companies. The market for listing services is extremely competitive. Each listing exchange has a different fee schedule that applies to issuers seeking to list securities on its exchange. Issuers have the option to list their securities on these alternative venues based on the fees charged and the value provided by each listing. Because issuers have a choice to list their securities on a different national securities exchange, the Exchange does not believe that the proposed fee changes impose a burden on competition.

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

*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)<sup>9</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>10</sup> 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)<sup>11</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2018-57 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to File Number SR-NYSE-2018-57. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/>

[rules/sro.shtml](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-2018-57 and should be submitted on or before January 4, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Eduardo A. Aleman,**

*Deputy Secretary.*

[FR Doc. 2018-27084 Filed 12-13-18; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

**[Release No 34-84771; File No. SR-NSCC-2018-012]**

**Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Certain Fees Relating to Mutual Fund Services, and Insurance and Retirement Processing Services**

December 10, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 26, 2018, National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III

below, which Items have been prepared by the clearing agency. NSCC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rules 19b-4(f)(2) and (f)(4) thereunder.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change**

The proposed rule change consists of modifications to Addendum A (Fee Structure) ("Addendum A") of NSCC's Rules & Procedures ("Rules") in order to make certain adjustments and clarifications in the fee provisions for NSCC's Mutual Fund Services ("MFS") and Insurance and Retirement Processing Services ("I&RS"), as described below.<sup>5</sup>

**II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

**1. Purpose**

The purpose of this proposed rule change is to reduce certain fees for MFS and I&RS set forth in Addendum A as described below, in order to better align fees with the costs of services provided by NSCC by reducing the fees so that the revenue received by NSCC would be closer to the costs of providing the services. In addition, certain fee reductions as described below are also intended to incentivize greater use of certain MFS and I&RS products. The proposed rule change would also clarify the description of certain fees as described below to improve clarity and transparency of the Rules. NSCC expects the proposed rule change would result in a decrease in revenue of

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(2) and (f)(4).

<sup>5</sup> Capitalized terms used herein and not otherwise defined shall have the meaning assigned to such terms in the Rules, available at [http://dtcc.com/-/media/Files/Downloads/legal/rules/nsccl\\_rules.pdf](http://dtcc.com/-/media/Files/Downloads/legal/rules/nsccl_rules.pdf).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

<sup>11</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>12</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

approximately 9.5% for each of the MFS and I&RS services.

#### (i) Background

NSCC has undertaken a strategic review of its pricing structure, and developed a revenue and pricing strategy with the goal of among other things, reducing pricing complexity in Addendum A and aligning pricing with costs.<sup>6</sup> As a result of the review, NSCC has determined that certain fees in MFS and I&RS have over time become misaligned with the costs of services. Such fees are misaligned because the revenue that NSCC has been receiving for such services has increased over time more than the costs to provide the services. NSCC believes that this is a result of streamlined processes in such services which have resulted in the reduction of processing costs for NSCC for such services. NSCC believes it is reasonable and appropriate to assess Members and Limited Members (collectively, “NSCC Members”) fees that are commensurate with the costs of services provided to NSCC Members. Accordingly, the proposed changes would adjust certain fees in MFS and I&RS so that revenue for NSCC would better align with the costs of the services by reducing the revenue that NSCC receives so that it is closer to the costs of providing the services by NSCC. NSCC believes that the proposed fee reductions would allow NSCC to lower the costs for services to NSCC Members while still providing adequate funding to enable NSCC to recover its costs in providing the services.

NSCC is also proposing certain fee changes as described below to incentivize greater use of certain MFS and I&RS products.

In addition, NSCC is proposing certain clarifying changes to the description of certain fees in Addendum A as described below to enhance clarity and transparency of the Rules.

#### (ii) Proposed Rule Changes

##### *A. Networking Omni/SERV® Fee Reductions*

Omni/SERV, which is a feature of the MFS Networking service, provides a streamlined communication platform for the transmission of files for fund accounts held in omnibus.<sup>7</sup> NSCC is

<sup>6</sup> NSCC is also proposing changes to fees for NSCC services that are not MFS and I&RS services in a separate proposal. In addition, NSCC’s affiliates, The Depository Trust Company and Fixed Income Clearing Corporation are proposing changes to their respective fees.

<sup>7</sup> An omnibus fund account is a fund account held by a financial intermediary on behalf of multiple underlying investors. Omni/SERV allows NSCC Members to communicate information relating to the underlying investors’ sub-accounts.

proposing to reduce the monthly fee for Omni/SERV file transmissions in Section IV.H.3. of Addendum A from \$2,500 per month to \$1,500 per month. As discussed below, NSCC believes that the proposed fee reduction would better align the fees with the costs of providing Omni/SERV.

##### *B. Profile Phases I and II Fee Reductions*

NSCC is proposing to reduce the monthly fee for Phases I and II of the Mutual Fund Profile Service (“Profile”) in Section IV.J.b. of Addendum A from \$2,000 per month to \$1,250 per month.<sup>8</sup> In addition, NSCC is proposing to change the credit that Profile II users (with 25 or fewer Funds) receive in footnote 1 of Addendum A from \$1,150 to \$1,000. Together, with the reduction in the monthly fee from \$2,000 to \$1,250, this proposed change would reduce the overall net fee for such users from \$850 to \$250.

As discussed below, NSCC believes that the proposed fee reduction would better align the fees with the costs of providing Phases I and II.

In addition, NSCC believes that the proposed reduction in the fees and the credit for smaller firms for Phases I and II would incentivize more firms to use the service. NSCC believes that more firms using the service would increase the value of the service by providing greater access to more Fund data to NSCC Members.

##### *C. Positions Fee Reductions*

NSCC is proposing to reduce the fees in three tiers for Positions (Full, New and Retirement Plans) in Section IV.K.2.a.(i) of Addendum A as follows: (i) Reduce fees for 0 to 500,000 items/month from \$8 to \$6 per 1,000 items, (ii) reduce fees for 500,001 to 2,000,000 items/month from \$4 to \$3.50 per 1,000 items, and (iii) reduce fees for 4,000,001 or more items/month from \$2 to \$1.25 per 1,000 items. NSCC is not proposing to reduce the fees for 2,000,001 to 4,000,000 items/month.<sup>9</sup> As discussed

<sup>8</sup> NSCC offers two levels of service through Profile, which are referred to in NSCC’s fee schedule as “Phase I” and “Phase II.” Phase I is used by NSCC Members to transmit price and rate information for mutual funds and pooled investment entities (each a “Fund” and collectively, “Funds”). Phase II consists of three databases, (i) the participant profile database, (ii) the security issue profile database, and (iii) the distribution declaration information profile database. Through these three databases, NSCC offers a centralized repository for prospectus and operational information for securities of Funds, Fund distributions and Fund processing capabilities. The current fee to use both Phase I and Phase II is \$2,000 per month. See Section IV.J.b. of Addendum A, *supra* note 5.

<sup>9</sup> NSCC has determined that, based on the average number of users and revenues generated for each

below, NSCC believes that the proposed fee reduction would better align the fees with the costs of providing Positions (Full, New and Retirement Plans).

##### *D. IFT Tiered Pricing Program Fee Reductions and Revised Description*

NSCC proposes to restructure the current In Force Transactions (“IFT”)<sup>10</sup> tiered pricing program, including certain fee reductions and certain clarifications as described below.

##### *(1) IFT Fee Reductions*

Currently, NSCC Members engaged in IFTs are required to choose an Activity Level (Level 1, Level 2 or Level 3) based on their projected activity. Each Activity Level has a corresponding minimum monthly fee. NSCC Members that choose Level 2 and Level 3 benefit from discounted fees per transaction after the amount of fees incurred for the month reaches the amount of the minimum monthly fee. Once the respective amount of the monthly fee is met, the discount for Level 2 is 20% (*i.e.*, from \$1.25/\$.35 per transaction to \$1.00/\$.28 per transaction) and the discount for Level 3 is 40% (*i.e.*, from \$1.25/\$.35 per transaction to \$.75/\$.21 per transaction). The discounts are set forth in an IFT Chart in Addendum A.

NSCC is proposing to decrease the overall price of certain IFTs in Section IV.K.3. of Addendum A from \$1.25 per request to \$.65 per request, increase the number of levels in the IFT tiered pricing program from three to four, set new monthly minimum fees for each level and apply new discount percentages for the proposed Level 2, Level 3 and Level 4.

As discussed below, NSCC believes that the proposed fee reduction would better align the fees with the costs of providing the IFT service.

In addition, the IFT tiered pricing program is intended to incentivize greater use of the IFT product by discounting transaction fees once the minimum monthly fee has been met for

tier, the intended overall revenue decrease for the service could be accomplished by reducing the three tiers as indicated without reducing the fees for the tier for 2,000,001 to 4,000,000 items/month. In addition, NSCC determined that the proposed tier structure following the Fee Reductions would continue to incentivize NSCC Members to increase their use of the service which NSCC believes increases efficiency in sending contract details. All NSCC Members using the service would benefit from the proposed fee reductions because the NSCC Members who reach the tier for 2,000,001 to 4,000,000 items/month would benefit from the fee reductions in the lower two tiers.

<sup>10</sup> IFT is an I&RS offering that automates data processing with respect to transactions relating to “in-force” contracts among participating NSCC Members. “In-force” contract transactions are transactions that occur after the underlying insurance contract has become effective.

higher Activity Level designations. The proposed changes are intended to further incentivize greater use by reducing transaction pricing for IFTs generally and increasing the number of minimum monthly fee thresholds, and thus discounts, from which NSCC Members may choose.

## (2) IFT Clarifications

NSCC is proposing to change the description of the IFT chart in Addendum A to clarify when the discounts are applied and update the description in the chart for readability, including changing “Activity Level” to

“Threshold Level” and stating the discounts as a percentage rather than a dollar amount for each Level and revising the description of the discount in the table. Below is the proposed updated chart:

### \* IN FORCE TRANSACTIONS CHART

Threshold level	Minimum monthly fee	Discount for transactions after fees exceed minimum monthly fee amount
Level 1 .....	\$250	No Discount (pay base price of \$0.65/\$0.35 for Requests/Inquiries).
Level 2 .....	500	5%.
Level 3 .....	1,000	10%.
Level 4 .....	3,000	20%.

NSCC is also proposing to move the fees for the IFTs that are currently listed in TIER 5 (\$1.25) to TIER 4 (\$0.65) in Section IV.K.3. of Addendum A with other transactions that are \$0.65 per request to reflect the proposed fee reductions set forth above. In addition, NSCC is proposing to move the description of the fee for Producer Management Portal (per inquiry), which is currently in TIER 5 in Section IV.K.3. of Addendum A, to Section IV.K.2.h. of Addendum A so that the fee is in the same section as other Producer Management Portal fees and to re-number the items in Section IV.K.2.h. of Addendum A to reflect the addition of the fee in this Section. NSCC is also proposing to remove TIER 5 in Section IV.K.3. of Addendum A since there would no longer be any fees in that TIER following the proposed changes described above. In addition, NSCC is proposing to rename the Producer Management Portal fee to “Distributor Subscription Fee” to clarify that the \$1.25 fee is for distributor inquiries for Producer Management Portal and to add a provision clarifying that the maximum fee paid by Distributors is \$6,000 per month. There is a \$6,000 per month maximum because if the number of inquiries would result in more than \$6,000 in fees in a month, the distributor could pay the \$6,000 Distributor Batch Service Fee for the month rather than pay on a per inquiry basis.

NSCC is proposing to revise the description of the \* In Force Transaction Chart as described above, move the IFT transaction fees to TIER 4 with other transaction fees that are \$0.65, delete TIER 5, move and rename the Producer Management Portal fee, re-number the items in Section IV.K.2.h. of Addendum A and add language relating to a \$6,000 maximum per month for the Distributor

Subscription Fee for enhanced clarity and transparency of the Rules.

### E. Decimals

In Section IV.H. through Section IV.K. of Addendum A, where a dollar amount is less than one and where there is not currently a zero in front of the decimal point, NSCC is proposing to place a zero before the decimal point for enhanced clarity and consistency with other decimals contained in Addendum A.

The proposed changes set forth in items II(A)(1)(ii)(A), (B), (C) and (D)(1) above are proposed fee reductions and are referred to herein as “Fee Reductions.” For each of the services for which Fee Reductions are being proposed, NSCC has determined that the revenue has increased over time more than the overall costs to provide the service. Since implementation of the current fees, revenues have increased for each of the services due to existing NSCC Members increasing their use of the services and new NSCC Members using the services. In addition, costs to provide the services are lower as a result of streamlined processes which increase efficiency in such services to allow NSCC to provide the services for lower costs than when the current fees were implemented. NSCC has determined that the revenue that it would receive for each of the services above following the proposed Fee Reductions would be closer to the costs of providing the services and sufficient to enable NSCC to recover costs to NSCC to provide the services. As such, NSCC believes that the proposed Fee Reductions would better align the fees with the costs of providing each of the services for which Fee Reductions are being proposed.

The proposed changes set forth herein in items II(A)(1)(ii)(D)(2) and (E) are proposed clarifying changes to the description of the fees and are referred

to herein as “Clarifications.” Each of the Clarifications are being proposed in order to improve the clarity and transparency of the Rules.

### (iii) Implementation Timeframe

NSCC expects to implement the proposed rule changes on January 1, 2019. As proposed, a legend would be added to Addendum A stating there are changes that became effective upon filing with the Commission but have not yet been implemented. The proposed legend also would include January 1, 2019, as the date on which such changes would be implemented and the file number of this proposal, and state that, once this proposal is implemented, the legend would automatically be removed from Addendum A.

### 2. Statutory Basis

NSCC believes this proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. Specifically, NSCC believes this proposal is consistent with Sections 17A(b)(3)(D)<sup>11</sup> and 17A(b)(3)(F)<sup>12</sup> of the Act and Rule 17Ad-22(e)(23)(ii),<sup>13</sup> as promulgated under the Act, for the reasons described below.

Section 17A(b)(3)(D) of the Act<sup>14</sup> requires, in part, that the Rules provide for the equitable allocation of reasonable dues, fees, and other charges among its participants.

The proposed Fee Reductions set forth above are consistent with 17A(b)(3)(D) of the Act<sup>15</sup> because the proposed fees would be allocated equitably among the NSCC Members

<sup>11</sup> 15 U.S.C. 78q-1(b)(3)(D).

<sup>12</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>13</sup> 17 CFR 240.17Ad-22(e)(23)(ii).

<sup>14</sup> 15 U.S.C. 78q-1(b)(3)(D).

<sup>15</sup> *Id.*



that subscribe for those services based on each NSCC Member's use of such services. In addition, NSCC believes that the proposed Fee Reductions are reasonable because they would enable NSCC to better align its revenue with the costs and expenses required for NSCC to provide the services to NSCC Members. Specifically, NSCC has determined that based on the current usage and projected revenue for each of the services listed above for which Fee Reductions are proposed, the decrease in fees would result in revenues for those services that would be closer to the costs of providing such services. Therefore, by establishing fees that align with the costs of delivery of these products and services and allocating those fees equitably among the subscribing NSCC Members, the proposed Fee Reductions are consistent with the requirements of Section 17A(b)(3)(D) of the Act.<sup>16</sup>

NSCC also believes that the proposed Clarifications above are consistent with 17A(b)(3)(D) of the Act<sup>17</sup> because each of the proposed Clarifications would clarify the meaning of the fees in the Rules without affecting the amount of the existing fee for such line item. The amounts of the existing fees would continue to be equitably allocated among the subscribing NSCC Members in accordance with their utilization of the services. Therefore, NSCC believes that the proposed Clarifications would not affect the allocation or amount of fees, and would thereby continue to provide for the equitable allocation of reasonable fees, consistent with Section 17A(b)(3)(D) of the Act.<sup>18</sup>

Section 17A(b)(3)(F) of the Act<sup>19</sup> requires, in part, that the Rules promote the prompt and accurate clearance and settlement of securities transactions. NSCC believes that the proposed Clarifications set forth above would enhance NSCC Members' ability to understand the fees associated with the MFS and I&RS services. Specifically, the proposed Clarifications would clarify the meaning of certain provisions of Addendum A relating to the IFT tiered pricing program and Producer Management Portal and revise certain decimals to be consistent with other decimals in the Rules and enhance clarity and transparency in the Rules in this regard. As such, the proposed Clarifications would allow NSCC Members to have a better understanding of the Rules in relation to their activities and thereby assist in promoting the

requirements of Section 17A(b)(3)(F) of the Act.<sup>20</sup>

Rule 17Ad-22(e)(23)(ii) under the Act<sup>21</sup> requires NSCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in the covered clearing agency. The proposed Clarifications set forth above would help ensure that the fees set forth in Addendum A are clear and transparent to NSCC Members. Having a clear and transparent Addendum A would help NSCC Members to better understand NSCC's fees and help provide NSCC Members with increased predictability and certainty regarding the fees they incur in participating in NSCC. As such, by improving the clarity and transparency of the Rules, NSCC believes the proposed Clarifications are consistent with Rule 17Ad-22(e)(23)(ii) under the Act.<sup>22</sup>

#### (B) Clearing Agency's Statement on Burden on Competition

NSCC does not believe that the proposed Fee Reductions would have an adverse impact, or impose any burden, on competition because, in each case, the proposed Fee Reductions would be a reduction in fees as currently set forth in the Rules that would not disproportionately impact any NSCC Members. As a reduction to the fees currently in the Addendum A for these services, the proposed Fee Reductions would not impede any NSCC Members from engaging in the services or have an adverse impact on any NSCC Members.

Moreover, the proposed Fee Reductions may promote competition because, in each case, the proposed Fee Reductions would allow NSCC Members to engage in a greater number of transactions with lower costs than they would incur today for the same transactions. In addition, as described above, NSCC believes that the proposed fee changes to the Profile Phase I and Phase II and the proposed fee reductions and increased discount levels for the IFT tiered pricing program would incentivize greater use of those services by NSCC Members. NSCC believes that increased use of the NSCC services as a result of the fee reductions would enhance participation in the marketplace by providing all NSCC Members that use the services more data which would increase the value of the

services and promote competition among NSCC Members that use the services.

NSCC does not believe that the proposed Clarifications would have any impact on competition because such changes are clarifications of the Rules that would not affect the rights or obligations of NSCC Members.

#### (C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NSCC has not received or solicited any written comments relating to this proposal. NSCC will notify the Commission of any written comments received by NSCC.

### 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<sup>23</sup> and paragraph (f) of Rule 19b-4 thereunder.<sup>24</sup> At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NSCC-2018-012 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR-NSCC-2018-012. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>20</sup> *Id.*

<sup>21</sup> 17 CFR 240.17Ad-22(e)(23)(ii).

<sup>22</sup> *Id.*

<sup>23</sup> 15 U.S.C 78s(b)(3)(A).

<sup>24</sup> 17 CFR 240.19b-4(f).

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 NSCC and on DTCC's website (<http://dtcc.com/legal/sec-rule-filings.aspx>). 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-NSCC-2018-012 and should be submitted on or before January 4, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>25</sup>

**Eduardo A. Aleman,**  
Deputy Secretary.

[FR Doc. 2018-27081 Filed 12-13-18; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84777; File No. SR-CboeBZX-2018-086]

### Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Amend Its Provision Related to Its Risk Monitor Mechanism

December 10, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 29, 2018, Cboe BZX Exchange, Inc. (the "Exchange" or "BZX") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II

below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> 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

Cboe BZX Exchange, Inc. (the "Exchange" or "BZX") proposes to amend its provision related to its Risk Monitor Mechanism. The text of the proposed rule change is provided in Exhibit 5.

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

The Exchange proposes to amend Rule 21.16 which governs the Risk Monitor Mechanism.

###### Background

By way of background, the Risk Monitor Mechanism provides Users<sup>5</sup> with the ability to manage their order and execution risk. Particularly, Rule 21.16 provides that the System will maintain a counting program for each

User. A User may configure a single counting program or multiple counting programs to govern its trading activity (*i.e.*, on a per port basis). The counting program counts executions, contract volume and notional value, within a specified time period established by each User ("specified time period") and on an absolute basis for the trading day ("absolute limits"). The specified time period will commence for an option when a transaction occurs in any series in such option. The counting program will also count a User's executions, contract volume and notional value across all options which a User trades ("Firm Category"). When the system determines that a User's Specified Engagement Trigger (*i.e.*, a volume trigger, notional trigger, count trigger and percentage trigger) has reached its established limit, the Risk Monitor Mechanism cancels or rejects such User's orders or quotes<sup>6</sup> in all series of the class and cancels or rejects any additional orders or quotes from the User in the class until the counting program resets.

#### Proposed Rule Change

The Exchange proposes to amend Rule 21.16 to (i) adopt the Risk Monitor Mechanism rule language used by its affiliated exchange, Cboe C2 Exchange, Inc. ("C2") (ii) provide the ability for Users [sic] to configure limits applicable to a group of EFIDs, and (iii) adopt a new a new risk parameter.

#### Rule Harmonization

First, the Exchange proposes to harmonize its Risk Monitor Mechanism Rule to that of its affiliated Exchange, C2. Particularly, C2 Rule 6.14 governs, among other things, its Risk Monitor Mechanism functionality. The Exchange notes the functionality of the Risk Monitor Mechanism is substantively the same as the Risk Monitor Mechanism on BZX. Indeed, the Exchange notes that C2 just recently adopted Rule 6.14 in connection with the technology migration of C2 onto the options platform of EDGX, and at such time conformed its previous Risk Monitor Mechanism functionality to the functionality that already existed on BZX.<sup>7</sup> Although the functionality is substantively the same, the rule structure and terminology used in the BZX and C2 rules differ. The Exchange wishes to provide harmonization with respect to this rule across the two exchanges and accordingly proposes to

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> See Exchange Rule 1.5(ee). The term "User" means any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3. As discussed below, the Exchange is proposing to replace references to "Users" in Rule 21.16 with "Member".

<sup>6</sup> See *infra* discussion accompanying footnotes 6-7 [sic].

<sup>7</sup> See Securities Exchange Act Release No. 83214 (May 11, 2018), 83 FR 22796 (May 16, 2018) (SR-C2-2018-005).

<sup>25</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

conform BZX Rule 21.16 to C2 Rule 6.14(c)(5) (*i.e.*, delete current Rule 21.16 in its entirety with the exception of subparagraphs (d) and (e), which will be relocated as described below, and adopt in whole the language from the relevant provisions of C2 Rule 6.14).<sup>8</sup> As noted above, the Exchange is also proposing substantive enhancements to its current functionality, which is described further below. The Exchange notes that C2 is simultaneously proposing the same Risk Monitor Mechanism enhancements and those enhancements are included in the new proposed conformed rule language.

First, the Exchange notes that proposed Rule 21.16 will not use the term “User”, and instead will use the term “Member”.<sup>9</sup> The Exchange notes that the definition of User is broader than Member, as it specifically captures Sponsored Participants. The Exchange believes “Member” is the more appropriate term to use with respect to the Risk Monitor Mechanism as the rule describes how the functionality works with respect to Members, and not necessarily Sponsored Participants. The Exchange notes that it currently does not have any Sponsored Participants, and to the extent it expects to have any in the future, it will revise the rule as needed to incorporate how the Risk Monitor Mechanism would function with respect to Sponsored Participants. The Exchange notes that “User” will be referred to herein as “Member”.

Next, in connection with adopting C2’s Risk Monitor Mechanism Rule language, the Exchange notes that it will be eliminating the term “class” and replacing it with “underlying”. Specifically, the Exchange notes that the Risk Monitor Mechanism is configured to count the risk parameters (referred to as “Specified Engagement Triggers” in current BZX Rule 21.16) across underlying securities or indexes. As an example, any option related to Apple (AAPL), would be considered to have the same underlying. Accordingly, if a corporate action resulted in AAPL1, AAPL and APPL1 one [sic] would be considered to share the same underlying

symbol AAPL. Only a single symbol-level rule for underlying AAPL would be configurable by the Risk Monitor Mechanism. The Exchange notes that the term “underlying” is also utilized in the Exchange’s technical specification documents. The Exchange therefore believes underlying is a more accurate term to use.

The Exchange also intends to clarify and codify in the new rule language what occurs in the event a Member does not reactivate its ability to send quotes or orders after its configured risk parameter limits have been reached. Currently, BZX Rule 21.16 explains how a Member may reset its counting periods. The proposed rule language includes a provision that provides that if the Exchange cancels all of a Member’s quotes and orders resting in the Book, and the Member does not reactivate its ability to send quotes or orders, the block will be in effect only for the trading day that the Member reached its limits. The Exchange notes this is not a substantive change, but rather is current practice, and that its affiliated Exchange, Cboe Options, includes similar language in its rules.<sup>10</sup> The Exchange believes adding this provision to the rules provides further transparency in its rules and reduces potential confusion as to what would happen in the situation where a Member fails to reset the counting program.

In connection with adopting C2’s Risk Monitor Mechanism Rule language, the Exchange also proposes to include language regarding a reset limit. Particularly, C2 Rule 6.14(c)(5)(d)(iii) [sic] (which will be renumbered to C2 Rule 6.14(c)(5)(d)(iv) [sic]) provides that the Exchange may restrict the number of Member underlying, EFID and EFID Group resets per second. The Exchange believes adding this provision to its rules provides transparency in the rules that the Exchange can impose such a restriction. The Exchange notes this is not a substantive change, but rather current practice.

In connection with the harmonization of C2 Rule [sic] 6.14, the Exchange notes that certain terminology is also changing. For example, current BZX Rule 21.16, provides that the counting program counts a Member’s executions, contract volume and notional value across all options which a Member trades (“Firm Category”). Going forward, this concept will be restated to provide generally that the System will count the risk parameters across all underlyings of an EFID (“EFID limit”). The Exchange reiterates the concept is the same, but the language conforms to

C2 rules and makes the rule easier to read.

The Exchange also proposes to adopt a definition of EFID as it proposes to reference EFIDs in proposed BZX Rule 21.16. Particularly, the Exchange proposes to add Rule 21.1(k) to define and describe EFIDs. Specifically, a Member may obtain one or more EFIDs from the Exchange (in a form and manner determined by the Exchange). The Exchange assigns an EFID to a Member, which the System uses to identify the Member and clearing number for the execution of orders and quotes submitted to the System with that EFID.<sup>11</sup> Each EFID corresponds to a single Member and a single clearing number of a Clearing Member with the Clearing Corporation. A Member may obtain multiple EFIDs, which may be for the same or different clearing numbers. A Member may only identify for any of its EFIDs the clearing number of a Clearing Member that is a Designated Give Up or Guarantor of the Trading Permit Holder as set forth in Rule 21.12. [sic] A Member is able (in a form and manner determined by the Exchange) to designate which of its EFIDs may be used for each of its ports. If a Member submits an order or quote through a port with an EFID not enabled for that port, the System cancels or rejects the order or quote. The proposed rule change regarding EFIDs is not a substantive change but rather codifies current functionality and mirrors current C2 Rule 6.8(b). The Exchange believes including a description of the use of EFIDs in the Rules adds transparency to the Rules.

The Exchange also notes that the new harmonized rule language incorporates the use of the term “quote” and “quotes”.<sup>12</sup> Currently, however, when describing what happens when a Specified Engagement Trigger is reached, Rule 21.16(b)(i) only references what happens to a Member’s “orders”. The Exchange notes however, that the term “order” as is used in Rule 21.16 was intended to capture both orders and quotes. Particularly, an “order” is defined as a firm commitment to buy or sell option contracts submitted to the System by a Member, and a “quote” is defined as a bid or offer entered by a Market-Maker as a firm order that updates the Market-Maker’s previous

<sup>8</sup> The Exchange notes that it is not proposing to adopt subparagraph (c)(5)(E) of C2 Rule 6.14 as such provision relates to complex orders, which functionality the Exchange currently does not offer.

<sup>9</sup> See Exchange Rule 1.5(n). The term “Member” shall mean any registered broker or dealer that has been admitted to membership in the Exchange. A Member will have the status of a “member” of the Exchange as that term is defined in Section 3(a)(3) of the Act. Membership may be granted to a sole proprietor, partnership, corporation, limited liability company or other organization which is a registered broker or dealer pursuant to Section 15 of the Act, and which has been approved by the Exchange. The Exchange notes that corresponding C2 Rule 6.14(c)(5) will use the term “TPH”, as “Member” is not a defined term used by C2.

<sup>10</sup> See Cboe Options Rule 8.18.

<sup>11</sup> The Exchange notes that currently EDGX’s [sic] rules refer only to the term “MPID”, which is a Member’s market participant identifier used for equities trading. The Exchange does not utilize MPIDs on its options platform and uses EFIDs instead. EFIDs are generally equivalent to MPIDs.

<sup>12</sup> See subparagraph (b), (c) and (d) of proposed EDGX [sic] Rule 21.16.

bid or offer, if any.<sup>13</sup> Indeed, the Exchange notes that the proposed reference to “quote” and “quotes” is not a substantive change to how the Risk Monitor Mechanism currently works or will work going forward. Accordingly, the Exchange believes incorporating the term “quote” and “quotes” alleviates confusion and better reflects how the Risk Monitor Mechanism operates (*i.e.*, both orders and quotes, as defined, can be affected). Similarly, the Exchange believes the proposal to eliminate the references to a “User’s order size”, “Market-Maker’s quote size” and “displayed and non-displayed size”, with respect to how the percentage trigger is calculated is not a substantive change. The Exchange notes the trigger is calculated the same on BZX and C2, and although proposed BZX Rule 21.16(a)(iv) doesn’t reference orders and Market-Maker quotes in particular, the calculation will not be changing and the Exchange doesn’t believe a reference to orders and Market-Maker quote size in particular under this provision is necessary. Similarly, the Exchange does not believe maintaining a reference to “displayed” and “non-displayed” size is necessary, as the Exchange believes the proposed language is broad enough to capture both types of orders. The Exchange also reiterates the absence of such references is not a substantive change and the calculation of the percentage trigger is not changing.

As noted above, the Exchange is not proposing to eliminate subparagraphs (d) or (e) of current BZX Rule 21.16, but rather relocate these provisions. The Exchange proposes to first relocate the contents of current subparagraph (d) to new subparagraph (d)(vi) of proposed BZX Rule 21.16 and clarify that the proposed provision governs “other resets” (*i.e.*, resets that are not a result from a limit being reached).<sup>14</sup> Particularly, the provision provides the System will reset the counting period for absolute limits when a Member refreshes its risk limit thresholds. The System will also reset the counting program and commence a new specified time period when (i) a previous specified time period has expired and a transaction occurs in any series of an underlying or (ii) a Member refreshes its risk limit thresholds prior to the expiration of the specified time period. The Exchange proposes to keep this language as it provides transparency in the rules as to when other resets occur

without limits being reached. Lastly, the Exchange notes that that current subparagraph (e) will be included under subparagraph (e) of the new proposed Rule 21.16. Particularly, “new” subparagraph (e) provides that a Member may also engage the Risk Monitor Mechanism to cancel resting bids and offers, as well as subsequent orders as set forth in BZX Rule 22.11.<sup>15</sup>

### EFID Groups

The Exchange next proposes to provide in the rules that in addition to underlying limits and EFID limits, the System will be able to count each of the risk parameters across all underlyings for a group of EFIDs (“EFID Group”)(“EFID Group limit”).<sup>16</sup> Similar to when a underlying limit or EFID limit are reached, when a Member’s EFID Group limit is reached, the Risk Monitor Mechanism will cancel or reject such Member’s orders or quotes in all underlying and cancel or reject any additional orders or quotes from any EFID within that EFID Group in all underlyings until the counting program resets. The System will not accept new orders or quotes from any EFID within an EFID Group after an EFID Group limit is reached until the Member manually notifies the Trade Desk to reset the counting program for the EFID Group, unless the Member instructs the Exchange to permit it to reset the counting program by submitting an electronic message to the System. The Exchange believes each Member is in the best position to determine risk settings appropriate for its firm based on its trading activity and business needs and that it may be based on a single EFID or EFID Group(s). The Exchange notes that its affiliate Exchange, Cboe Exchange, Inc. (“Cboe Options”) similarly allows its members to set similar risk parameters at the acronym-level (which is similar to an EFID) or firm level (similar to an EFID Group).<sup>17</sup>

### New Risk Parameter

The Exchange lastly proposes to adopt a new risk parameter. Specifically, under the proposed functionality, a Member may specify a maximum number of times that the risk parameters (*i.e.*, volume, notional, count and/or percentage) are reached over a specified interval or absolute period (“risk trips”).

When a risk trip limit has been reached, the Risk Monitor Mechanism will cancel or reject a Member’s orders or quotes pursuant to subparagraph (b) of Rule 21.16. The Exchange notes that a similar risk parameter (*i.e.*, a parameter based on the number of risk “incidents” that occur over a specified time) is available on its affiliate Exchange, Cboe Options.<sup>18</sup> The Exchange believes the proposed changes to its Risk Monitor Mechanism rule sufficiently allows Members to adjust and adopt parameter inputs in accordance with their business models and risk management needs.

### 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.<sup>19</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>20</sup> 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)<sup>21</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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.<sup>22</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>23</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable

<sup>15</sup> The Exchange notes that C2 is proposing to also add this provision to its C2 Rule 6.14 in order to provide further transparency in its rules governing the Risk Monitor Mechanism.

<sup>16</sup> An EFID may not belong to more than one EFID Group. The Exchange notes that the Members determine how many, if any, EFID Groups to establish and determine which EFIDs belong to a particular EFID Group, if any.

<sup>17</sup> See Cboe Options Rule 8.18.

<sup>18</sup> See Cboe Options Rule 8.18, which provides that a Hybrid Market Maker or a TPH Organization may specify a maximum number of Quote Risk Monitor Mechanism (“QRM”) QRM Incidents on an Exchange-wide basis.

<sup>19</sup> 15 U.S.C. 78f(b).

<sup>20</sup> 15 U.S.C. 78f(b)(5).

<sup>21</sup> *Id.*

<sup>22</sup> 15 U.S.C. 78f(b).

<sup>23</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> See BZX Rules 16.1(a)(42) and (51) and 21.1(c).

<sup>14</sup> The Exchange notes that C2 is also proposing to add this provision to its C2 Rule 6.14 in order to provide further transparency in its rules governing the Risk Monitor Mechanism.

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)<sup>24</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

First, the Exchange believes its proposal to harmonize Rule 21.16 to C2 Rule 6.14 provides uniformity across affiliated exchange rules that govern the same functionality and makes the rule easier to read, which reduces potential confusion. The Exchange also proposes to mirror C2 Rule 6.14 because it believes consistent rules will increase the understanding of the Exchange's operations for Members that are also participants on C2. As discussed above, notwithstanding the proposal to adopt new terminology and/or the absence of certain references, the Exchange intends no substantive changes to the meaning or application of Rule 21.16 other than what is described above with respect to EFID Groups and the new risk trips parameter. Particularly, the Exchange believes the adoption of the definition of "EFID" provides transparency in the rules and alleviates confusion, as the Exchange references EFIDs multiple times throughout proposed Rule 21.16 and utilizes EFIDs generally on the Exchange with respect to its options platform. The Exchange notes the proposed definition is substantively the same as the definition of EFIDs under C2's rules.<sup>25</sup> The Exchange believes the use of "quote" and "quotes" also alleviates confusion as the current Risk Monitor Mechanism in fact affects both orders and quotes, as defined, and was intended to cover both a Member's orders and Market Maker quotes. Similarly, the Exchange believes using the term "underlying" instead of "class" and "Member" instead of "user" alleviates potential confusion as the proposed terms more accurately reflect how the Risk Monitor Mechanism operates.

The Exchange believes the rule changes to codify current practice alleviates potential confusion, provides

transparency in the rules and makes the rules easier to read. For example, providing language regarding (i) a Member's failure to reset or initiate a reset of the counting program and (ii) the Exchange's ability to restrict resets, provides transparency in the rules as to what occurs in those situations, harmonizes rule language with that of the Exchange's affiliated Exchanges, and reduces potential confusion. The alleviation of confusion removes impediments to, and perfects the mechanism of, a free and open market and a national market system, and, in general, protects investors and the public interest.

The Exchange believes providing Members the ability to configure certain risk parameters across underlyings for an EFID Group is also appropriate because it permits a Member to protect itself from inadvertent exposure to excessive risk on an additional level (*i.e.*, on an EFID group-level, not just underlying- or EFID-level). Reducing such risk will enable Members to enter quotes and orders with protection against inadvertent exposure to excessive risk, which in turn will benefit investors through increased liquidity for the execution of their orders. Such increased liquidity benefits investors because they may receive better prices and because it may lower volatility in the options market. The Exchange also believes each Member is in the best position to determine risk settings appropriate for its firm based on its trading activity and business needs and that that may be based on an EFID Group(s). Additionally, as discussed above, Cboe Options similarly allows its members to set risk parameters at the acronym-level (which is similar to an EFID) or firm-level (similar to an EFID Group).<sup>26</sup>

Lastly, the Exchange believes the proposal to adopt the new risk parameter based on number of times a risk parameter or group of risk parameters are reached will provide Members with an additional tool for managing risks. Furthermore, as noted above, the Exchange's affiliated exchange offers similar functionality.<sup>27</sup> Overall, the proposed rule change provides Members more protections that reduce the risks from potential system errors and market events. As a result, the proposed changes, including the new risk parameter for the Risk Monitor Mechanism, have the potential to promote just and equitable principles of

trade. Additionally, the proposed changes apply to all Members.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the Exchange believes that the proposed changes with respect to its Risk Monitor Mechanism help promote fair and orderly markets and provide clarity and transparency the Rule. For example, the proposed rule change adds an additional risk control parameter and flexibility to help further prevent potentially erroneous executions, which benefits all market participants. The proposed changes apply uniformly to all Members and the Exchange notes that the proposed changes apply to all quotes and orders in the same manner. Additionally, the Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed enhancements apply only to trading on the Exchange. Additionally, the Exchange notes that it is voluntary for the Members to determine whether to make use of the new enhancements of the Risk Monitor Mechanism. To the extent that the proposed changes may make the Exchange a more attractive trading venue for market participants on other exchanges, such market participants may elect to become Exchange market participants.

#### *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.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not:

A. significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. 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

<sup>24</sup> *Id.*

<sup>25</sup> See C2 Rule 6.8(b). The Exchange notes that proposed Rule 21.1(k)(2) does not include a cross reference to a rule regarding Designated Give Ups and Guarantors as BZX rules do not have a similar corresponding rule as C2 Rule 6.30.

<sup>26</sup> See Cboe Options Rule 8.18.

<sup>27</sup> See Cboe Options Rule 8.18.

Act<sup>28</sup> and Rule 19b-4(f)(6) thereunder.<sup>29</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>30</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>31</sup> 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 to provide Members with additional tools and greater flexibility for managing their potential risk as soon as possible. Accordingly, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal as operative upon filing.<sup>32</sup>

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 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](mailto:rule-comments@sec.gov). Please include File Number SR-CboeBZX-2018-086 on the subject line.

<sup>28</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>29</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and 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.

<sup>30</sup> 17 CFR 240.19b-4(f)(6).

<sup>31</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>32</sup> For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

##### *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-2018-086. 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-CboeBZX-2018-086 and should be submitted on or before January 4, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>33</sup>

**Eduardo A. Aleman,**

*Deputy Secretary.*

[FR Doc. 2018-27085 Filed 12-13-18; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84768; File No. SR-DTC-2018-011]

### Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Guide to the DTC Fee Schedule

December 10, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 26, 2018, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rules 19b-4(f)(2) and (f)(4) thereunder.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to the Guide to the DTC Fee Schedule ("Fee Guide")<sup>5</sup> in order to (i) simplify the pricing structure, (ii) align fees with the costs of services provided by DTC, and (iii) encourage Participant practices that promote efficient market behavior. The proposed changes would include: (A) Grouping certain fee line items for related or similar services under one fee line item, (B) deleting fees with little or no activity, (C) updating certain fees to reflect DTC's costs in relation to the service, (D) decreasing certain fees in order to incentivize Participants to utilize certain DTC services that promote efficiency, both in the servicing of physical securities in the Custody Service and for the settlement of securities transactions at DTC, and (E) increasing a surcharge to discourage the late submission of certain underwriting documentation. In addition, the proposed rule change would also make

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(2) and (f)(4).

<sup>5</sup> Each capitalized term not otherwise defined herein has its respective meaning as set forth in the Fee Guide and the Rules, By-Laws and Organization Certificate of DTC (the "Rules"), available at <http://www.dtcc.com/legal/rules-and-procedures.aspx>.

<sup>33</sup> 17 CFR 200.30-3(a)(12).

clarifying changes to the Fee Guide, as described in greater detail below.

## II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### *(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

#### 1. Purpose

The proposed rule change would amend the Fee Guide in order to (i) simplify the pricing structure, (ii) align fees with the costs of services provided by DTC, and (iii) encourage Participant practices that promote efficient market behavior. The proposed changes will include: (A) Grouping certain fee line items for related or similar services under one fee line item, (B) deleting fees with little or no activity, (C) updating certain fees to reflect DTC's costs in relation to the service, (D) decreasing certain fees in order to incentivize Participants to utilize certain DTC services that promote efficiency, both in the servicing of physical securities in the Custody Service and for the settlement of securities transactions at DTC, and (E) increasing a surcharge to discourage the late submission of certain underwriting documentation. In addition, the proposed rule change would also make clarifying changes to the Fee Guide, as described in greater detail below.

#### (i) Background

Participants are charged fees in accordance with the Fee Guide, based upon their activities and the services that they utilize. The Fee Guide lists approximately 283 individual fees. Certain fees need to be updated in order to better align with the costs incurred by DTC in providing those services.

In response to feedback from Participants that the pricing structure is complex, DTC has undertaken a strategic review of its pricing and its pricing structure. As a result of the review, DTC developed an enhanced pricing strategy with the goals of reducing pricing complexity, aligning fees with costs, and encouraging

Participant practices that promote efficient market behavior.<sup>6</sup>

#### A. Simplify the Pricing Structure

##### (1) Fee Groupings

As discussed above, Participants have indicated that the DTC pricing structure is complex. In response to this feedback, the proposed rule change would reduce the number of individual fee line items by creating new fee groupings that would consolidate separate fee line items for similar services or transactions. These fee line items would be grouped together into one line item with a standard fee, and the related fee condition may be modified to conform to the fee grouping. The standard fee would apply to each of the grouped services or transactions. In most cases, the proposed rule change would not change the amount charged to a Participant for each service or transaction within the fee grouping. However, in a few circumstances, the proposed standard fee may reflect an increase or decrease relative to the amount currently charged in order to either (i) align fees with costs or (ii) encourage Participant practices that promote efficient market behavior.

##### (2) Removing Fees With Little or No Activity

The proposed rule change would remove fees for certain services that have little or no activity.<sup>7</sup> Pursuant to the proposed rule change, DTC would delete these fees in order to further simplify the pricing structure by reducing the number of line items in the Fee Guide.

#### B. Fee Realignment

Pursuant to the proposed rule change, DTC would update certain fees in the Fee Guide to more closely reflect the costs incurred by DTC in providing the services. DTC believes that it is reasonable and appropriate to charge fees that properly align with DTC's costs. Aligning fees with costs adds efficiency to the market by allowing a Participant to more accurately evaluate the value of a service and to make business decisions accordingly. The primary goal of DTC with respect to the proposed realignment of fees is to reduce, where appropriate, the fees charged to Participants for services. Certain of the proposed fees that relate to services with declining volumes have

been reduced because they consume fewer DTC resources. Other proposed fees have been reduced because certain streamlined processes have resulted in the reduction of processing costs for DTC. In both cases, pursuant to the proposed rule change, DTC, through these fee reductions, would be passing along its cost savings to Participants.

Finally, a few proposed fees would result in fee increases in order to align with the costs incurred by DTC in providing the relevant services. Increasing a fee to align with the costs incurred by DTC in providing the service would allow DTC to efficiently offer the particular service, as well as continue to appropriately manage its resources for all its services, thereby enabling DTC to efficiently provide dependable and stable services to its Participants.

#### C. Promote Efficient Market Behavior

DTC believes the proposed changes to reduce certain fees would encourage Participant use of certain DTC services that offer efficiencies that are designed to promote the prompt and accurate clearance and settlement of securities transactions ("efficient market behavior"). Pursuant to the proposed rule change, DTC would reduce certain fees for its Custody Service in order to encourage Participants to centralize the servicing of their physical securities at DTC, which already services the securities deposited at DTC by Participants for book-entry services. The Custody Service allows a Participant to outsource to DTC servicing of physical securities by depositing, among other things, securities not eligible for DTC book-entry services, including securities such as customer-registered custodial assets, restricted shares, and other DTC-ineligible securities such as certificated money market instruments (MMIs), private placements, and limited partnership interests.<sup>8</sup> A Participant that does not use the Custody Service would otherwise need to secure its own physical securities as well as independently handle certain transactions, such as the transfer of physical securities and the handling of reorganization events. By utilizing the Custody Service, a Participant is able to benefit from, among other things, cost savings from the economies of scale offered by DTC, and the added efficiency of the limited depository services offered by DTC with respect to

<sup>6</sup> DTC's affiliates, National Securities Clearing Corporation ("NSCC") and Fixed Income Clearing Corporation ("FICC") have undertaken similar reviews and are proposing changes to their respective fees.

<sup>7</sup> DTC examined how often all fees were charged over a period of no less than two years.

<sup>8</sup> For further information about the Custody Service, see the Custody Service Guide, available at <http://www.dtcc.com/~media/Files/Downloads/legal/service-guides/Custody.pdf>.



securities held in its Custody Service.<sup>9</sup> In addition, pursuant to the proposed rule change, DTC would also reduce or eliminate fees for certain settlement services in order to encourage Participants to submit their transactions earlier in day. The earlier submission of transactions by Participants results in more efficient settlement processing by increasing the volume of transactions processed in the night-cycle, which, in turn, enhances intraday settlement processing.

Finally, pursuant to the proposed rule change, DTC would increase an underwriting surcharge charged to a Participant for the late submission of a letter of representations (“LOR”) or blanket letter of representations (“BLOR”) <sup>10</sup> in order to increase the incentive for a Participant to submit its underwriting documentation in a timely manner. Failure of a Participant to submit a LOR or BLOR with respect to a security on time could delay the clearance and settlement of transactions in that security.

#### D. Clarify the Fee Guide

Pursuant to the proposed rule change, DTC would amend certain headings, fee names, and fee conditions to add clarity and conformity to the Fee Guide.

#### (ii) Proposed Fee Changes

Pursuant to the proposed rule change, DTC would amend the Fee Guide as follows:

##### A. Simplify the Pricing Structure

##### (x) Fee Groupings With No Change to Fee Amount

Custody and Securities Processing/ Securities Processing/Maintenance of Long Position (Registered Securities)

(1) *Frozen Letter*. Currently, there are separate identified fees for (i) “deliver,” (ii) “receive,” and (iii) “reject” frozen letter transactions, each with a fee of \$10.00. Pursuant to the proposed rule change, these fees would be consolidated and charged as a “Frozen letter deliver, receive or reject” fee. The proposed rule change would not change the current amount of the fee. DTC

<sup>9</sup> The limited depository services may include physical processing for the security on a Participant’s behalf, such as facilitating the transfer of security certificates, and providing custody reorganization services.

<sup>10</sup> In order to make a book-entry only (“BEO”) issue eligible at DTC, the issuer must submit to DTC a LOR or BLOR prior to such issue being determined to be eligible. For more information on LORs and BLORs, see The DTC Operational Arrangements (Necessary for Securities to Become and Remain Eligible for DTC Services) at 4–6, available at <http://www.dtcc.com/~media/Files/Downloads/legal/issue-eligibility/operational-arrangements.pdf>.

believes that it would be appropriate to consolidate these fees because it would simplify the pricing structure by having one standard fee for frozen letter transactions.

Custody and Securities Processing/ Securities Processing/General Asset Services

(2) *Researching of aged and other special items; Extraordinary processing/ research fee for ICSR; Paying agent research*. Pursuant to the proposed rule change, “Researching of aged and other special items,” “Extraordinary processing/research fee for ICSR,” and “Paying agent research” line items would be consolidated and charged as a “Researching fee.” <sup>11</sup> The proposed condition would read, “per hour or per CUSIP, depending on the nature of the research.” The proposed rule change would not affect the current fee of \$100.00 per hour or CUSIP, as applicable. DTC believes that it would be appropriate to consolidate these fees because it would simplify the pricing structure by having one standard fee for these research activities.

Custody and Securities Processing/ Corporate Actions/Instruction Processing Fee

(3) *EDS/DRIP Election; Voluntary Corporate Action Base Election; Voluntary Corporate Action Election*. These separate fees all relate to voluntary corporate action instructions. Pursuant to the proposed rule change, these fees would be consolidated and charged as a “Corporate Action Instruction Fee.” The proposed rule change would not affect the amount of the fee. Pursuant to the proposed rule change, the condition for the fee would read: “Per voluntary and elective EDS/ DRP instruction, up to 50 instructions per offer” in order to reflect the consolidation of the fees for each instruction type. DTC believes that it would be appropriate to consolidate these fees because it would simplify the pricing structure by having one standard fee for transactions relating to instruction processing for voluntary corporate action events.

Custody and Securities Processing/ Custody Services/Custody (Non-Core Services)

(4) *Custody inventory swing withdrawal; Custody inventory swing deposit*. Pursuant to the proposed rule change, these fees would be consolidated and charged as a “Custody

<sup>11</sup> As discussed below, certain other research fees with respect to Deposit Automation Management and New York Window Services would also be consolidated into the proposed “Researching fee.”

inventory swing deposit or withdrawal” fee. The condition for the fee would be modified to read: “Per deposit or withdrawal.” The proposed rule change would not affect the current fee. DTC believes that it would be appropriate to consolidate these fees because it would simplify the pricing structure by having one standard fee for these related activities.

Custody and Securities Processing/ Custody Services/Custody (Exception Processing)

(5) *Rejects*. There are currently separate identified fees of \$125.00 for (i) “Transfer,” (ii) “Reorg,” and (iii) “Front-end reorg reject.” <sup>12</sup> Pursuant to the proposed rule change, these fees would be consolidated and charged as a “Transfer, Reorg or Front-end reorg rejects” fee. The proposed rule change would not affect the amount of the fee. DTC believes that it would be appropriate to consolidate the fees because it would simplify the pricing structure by having one standard fee for custody rejects.

Custody and Securities Processing/ Deposit Services/Branch Deposits (Core Services)

(6) *Regular deposit received from a branch; Deposit of bearer securities received from a branch*. Pursuant to the proposed rule change, these fees would be consolidated and charged as a “Regular or bearer deposit received from a branch” fee. The proposed rule change would not affect the current fee of \$18.00 for each activity. DTC believes that it would be appropriate to consolidate the fees because it would simplify the pricing structure by having one standard fee for branch deposits.

Custody and Securities Processing/ Deposit Services/Branch Deposits (Exception Processing),<sup>13</sup> and Custody and Securities Processing/Deposit Services/Deposit Automation Management (DAM)

(7) *BDS TA deposit reject; Rejected deposit; Rejected reorg deposit*. Pursuant to the proposed rule change, these fees would be consolidated and charged as a “Rejected BDS TA deposit, Rejected DAM or Rejected Reorg deposits” fee. The proposed rule change would not affect the current fee of \$125.00 for each activity. DTC believes

<sup>12</sup> There is also a \$75.00 “Custody Deposit” fee, which would not be affected by the proposed rule change.

<sup>13</sup> To conform with the proposed fee groupings, the subheading “Branch Deposits (Exception Processing)” would be modified to read “Branch Deposits and Deposit Automation Management (DAM) (Exception Processing).”

that it would be appropriate to consolidate the fees because it would simplify the pricing structure by having one standard fee for branch deposit rejections.

(8) *Registered certificate deposit; Previous reverse split.* Pursuant to the proposed rule change, these fees would be consolidated and charged as a “Registered certificate deposit or Previous reverse split” fee. The proposed rule change would not affect the current fee of \$12.00 for each activity. DTC believes that it would be appropriate to consolidate the fees because it would simplify the pricing structure by having one standard fee for these DAM activities.

(9) *Research fee.* Pursuant to the proposed rule change, this fee would be consolidated into the proposed “Researching fee,” as discussed above.<sup>14</sup> For clarity and transparency, the “Researching fee” line item would also appear in this section. Pursuant to the proposed rule change, the proposed condition would read: “per hour or per CUSIP, depending on the nature of the research.”

Custody and Securities Processing/New York Window Services/Deliveries, and Custody and Securities Processing/New York Window Services/Receives<sup>15</sup>

(10) *ESS or FOSS delivery; ESS or FOSS reclaim delivery; ESS or FOSS receive; ESS or FOSS reclaim receive.* Pursuant to the proposed rule change, each of these activities would be consolidated and charged as an “ESS or FOSS delivery, receive or reclaim” fee. The condition for the fee would be modified to read: “Per delivery, per receive or per item for reclaim.” The proposed rule change would not affect the current fee of \$25.00. DTC believes that it would be appropriate to consolidate the fees because it would simplify the pricing structure by having one standard fee for these related and similar activities.

(11) *Internal cross-delivery; Internal cross-receive.* Pursuant to the proposed rule change, these activities would be consolidated and charged as an “Internal cross-delivery or receive” fee. The condition for the proposed fee grouping would read: “Per delivery or receive.” The proposed rule change would not affect the current fee of \$20.00 for each activity. DTC believes that it would be appropriate to consolidate the fees because it would

simplify the pricing structure by having one standard fee for the service.

Custody and Securities Processing/New York Window Services/Other Services

(12) *Research.* Pursuant to the proposed rule change, this fee would be consolidated into the proposed “Researching fee,” as discussed above.<sup>16</sup> For clarity and transparency, the “Researching fee” line item would also appear in this section. Pursuant to the proposed rule change, the proposed condition would read: “per hour or per CUSIP, depending on the nature of the research.”

Custody and Securities Processing/Withdrawal Services/Direct Registration System (DRS)

(13) *Initiation of DRS Profile transaction; Cancellation of DRS Profile change.* Pursuant to the proposed rule change, these fee line items would be consolidated and charged as an “Initiation or cancellation of DRS Profile transaction” fee. The condition for the fee grouping would read: “Per transaction submitted or transaction cancelled before a Limited Participant Account action.” The proposed rule change would not affect the current fee of \$0.31 for each activity.

Custody and Securities Processing/Withdrawal Services/Municipal Bearer Bond Service, and Custody and Securities Processing/Withdrawal Services/Urgent Withdrawal, or Certificates-on-Demand, and Custody and Securities Processing/Withdrawal Services/Withdrawals-by-Transfer

(14) *Critical withdrawal request; Generation of WT (interface or window pickup); Direct mail by transfer agent (DMA)—Certificate.* Pursuant to the proposed rule change, the fees for these activities would be consolidated and charged as a “Physical Certificate: Critical withdrawal, WT (interface or window pick-up) or DMA withdrawal request” fee. The condition for the fee would be modified to read: “Per request or assignment; special costs and TA fees additional.” The proposed rule change would not affect the current fee of \$500.00 per request or assignment. DTC believes that it would be appropriate to consolidate the fees because it would simplify the pricing structure by having one standard fee for the service. In order to reflect the proposed consolidation, DTC is proposing to (i) modify the subheading of “Urgent Withdrawal, or Certificates-on-Demand” to “Urgent Withdrawal, Certificates-on-Demand, or Withdrawals by Transfer,” and (ii)

delete the current subheading of “Withdrawals by Transfer.”

Settlement Services/Book-Entry Delivery, Excluding MMIs

(15) *Stock loans and returns.* In the current Fee Guide, there is a “Stock loans and returns” fee of \$0.25 per item; charged to the deliverer. The receiver of a stock loan or return is currently charged \$0.11 under the fee “Receive, regardless of time.” Pursuant to the proposed rule change, both the deliverer and receiver would be charged a Stock loans and returns fee of \$0.18, the average of the respective current fees. The proposed rule change would modify the condition of “Stock loans and returns” fee to read: “Per item; charged to deliverer and receiver.” The purpose of the proposed rule change would be to simplify the pricing structure by having one standard fee for both sides of the transaction.

(16) *Receive, regardless of time.* Pursuant to the proposed rule change, the fee name would be amended to reflect the proposed exclusion of stock loan receives and reclaim receives from this fee, in order to align with the proposed changes to the “Stock loans and returns” and “Reclaim” fees. As such, DTC is proposing to amend the fee name to “Receive, regardless of time (excluding reclaims and stock loans and returns).”

(17) *Reclaim.* In the current Fee Guide, there is a “Reclaim” fee of \$0.45 per item; charged per delivery. Currently, the receive of a reclaim is charged \$0.11 as a “Receive, regardless of time” fee. Pursuant to the proposed rule change, both a delivery and receive of a reclaim would be charged as a “Reclaims”<sup>17</sup> fee of \$0.26, the average of the respective current fees. The proposed rule change would modify the condition of “Reclaims” fee to read: “Per delivery or receive.” The purpose of the proposed rule change would be to simplify the pricing structure by having one standard fee for both sides of the transaction.

Settlement Services/Money Market Instruments (MMI) by Book-Entry Only

(18) *MMI DO; Maturity or reorganization presentment; Issuance instruction, both directly placed and dealer placed; Issuance deposit; MMI issuance receiver.* Pursuant to the proposed rule change, these fees would be consolidated and charged as an “MMI Transaction” fee. The proposed rule change would not affect the current

<sup>14</sup> See *supra* note 11.

<sup>15</sup> To conform with the proposed fee groupings, the subheading “Deliveries” that appears under the New York Window Services heading would be amended to “Deliveries and Receives.” The current subheading “Receives” would be deleted.

<sup>16</sup> See *supra* note 11.

<sup>17</sup> For conformity with other fee names in this section, DTC is proposing to change the fee name to “Reclaims.”

fee of \$1.00 for each transaction. To reflect the consolidation, DTC is proposing to modify the condition to read: "Per item delivered, or received, issued or maturing." DTC believes that it would be appropriate to consolidate the fees because it would simplify the pricing structure by having one standard fee for these MMI transactions.

(y) Deletion of Fees With Little or No Volume

The following fees have minimal or no activity. Pursuant to the proposed rule change, these fees would be deleted in order to simplify the pricing structure.

Custody and Securities Processing/  
General Asset Services

(19) *Transmission of image of deposit by fax or email, additional recipient.*

(20) *Photocopying of statement or certificate.*

(21) *Recording of certificate numbers.*

Custody and Securities Processing/  
Municipal Bearer Bond Service

(22) *BEO issue.*

Custody and Securities Processing/  
Corporate Actions/Instruction  
Processing Fees

(23) *Voluntary Corporate Action Bulk Election.*

Custody and Securities Processing/  
Custody Services/Custody (Core  
Services)

(24) *Certified Mailing.*

(25) *Photocopying and sending certificate or other document copies.*

Custody and Securities Processing/  
Custody Services/Custody (Exception  
Processing)

(26) *Box-to-box audit count.*

(27) *Customer audit count.*

Custody and Securities Processing/  
Deposit Services/Branch Deposits  
(Exception Processing), and Custody  
and Securities Processing/Deposit  
Services/Deposit Automation  
Management (DAM)

(28) *Incorrect/no PDF-generated DAM deposit ticket attached.*

(29) *Depository Facilities: Facility usage fee.*

(30) *Depository Facilities: Facility deposit.*

Custody and Securities Processing/  
Deposit Services/Restricted Deposits

(31) *Processing of trailing documents.*

Custody and Securities Processing/New  
York Window Services/Other Services

(32) *Pass-through fees.*

(33) *Long position.*

Custody and Securities Processing/  
Reorganization Services/Reorganization

(34) *Photocopy.*

Custody and Securities Processing/  
Withdrawal Services/Direct Registration  
System (DRS)

(35) *Establishment of DRS account and subsequent mailing transaction.*

(36) *Initiation of DRS Profile change using DRST via PTS or PBS.*

(37) *Cancellation of DRS Profile change using DRST via PTS or PBS.*

Custody and Securities Processing/  
Withdrawal Services/Interface  
Department

(38) *Sorting.*

Forms

(39) *Forms provided by DTC.<sup>18</sup>*

B. Simplify the Pricing Structure/  
Realignment of Fee (Fee Groupings With  
a Fee Realignment)

Custody and Securities Processing/  
Securities Processing/Maintenance of  
Long Position (Registered Securities)

(40) *Less active issue.* Currently, there are separate fees for registered corporate issues (\$0.70) and registered municipal issues (\$1.29). Pursuant to the proposed rule change, the fee would be \$0.70 for either type of security. The proposed rule change would result in a fee decrease of \$0.59 for registered municipal issues, which would better align the fee with declining volumes of less active registered municipal securities. As discussed above, certain fees that relate to services with declining volumes would be reduced because they consume fewer DTC resources. Pursuant to the proposed rule change, the new fee condition would read: "For registered corporate issues, when a daily average of 15 or fewer participants have position or registered municipal issues, when a daily average of 1 or 2 participants have position." The purpose of the proposed rule change would be to (i) simplify the pricing structure by having one standard fee for the service and (ii) more closely align to DTC's decreased cost of providing the service for registered municipal securities.

Custody and Securities Processing/  
Withdrawal Services/Municipal Bearer  
Bond Service, and Custody and  
Securities Processing/Withdrawal  
Services/Urgent Withdrawal, or  
Certificates-on-Demand

(41) *COD<sup>19</sup> (Municipal Bearer Bond Service); COD (Urgent Withdrawal, or Certificates-on-Demand).* Currently, a COD under the Municipal Bearer Bond Service is charged a fee of \$300.00, and other CODs are charged a fee of \$240.00. Pursuant to the proposed rule change, the COD (Municipal Bearer Bond Service) fee line item would be consolidated with the COD (Urgent Withdrawal, or Certificates-on-Demand) fee line item and charged as a "COD" fee, in the amount of \$300.00. The proposed rule change would result in a fee increase of \$60.00 for non-Municipal Bearer Bond Service CODs. The condition for the fee would be amended to read: "Per withdrawal/COD." The purpose of the proposed rule change with respect to consolidating the fees would be to simplify the pricing structure by having one standard fee for these COD transactions. The purpose of the proposed rule change with respect to the fee increase would be to align to DTC's cost of providing the COD service, whether under the Municipal Bearer Bond Service or otherwise. Finally, in order to reflect the proposed consolidation, DTC is proposing to delete the subheading "Municipal Bearer Bond Service."

Settlement Services/Book-Entry  
Delivery, Excluding MMIs

(42) *Book-entry deliveries through CNS: Delivery to CNS; Receive from CNS.* Currently, a Participant that delivers securities to the NSCC CNS<sup>20</sup> account at DTC is charged \$0.09 per item delivered; charged to both sides. A Participant that receives securities from the CNS account is charged \$0.035 per item received, charged to both sides. Pursuant to the proposed rule change, each of these activities would be charged as a "Delivery to/from CNS" fee of \$0.08, charged to both sides. To reflect the consolidation, DTC is proposing to delete the verbiage "Book-entry deliveries through CNS." The purpose of the proposed rule change with respect to consolidating the fees would be to simplify the pricing structure by charging a standard fee to both a deliverer and receiver in a CNS transaction. The purpose of the proposed rule change (with respect to

<sup>18</sup> To conform with this change, the entire "Forms" section of the Fee Guide would be removed.

<sup>19</sup> COD is an acronym for "certificate on demand."

<sup>20</sup> CNS is an acronym for the NSCC "Continuous Net Settlement" system.

establishing a new fee for the fee grouping) would be to update the fee to better reflect the operational complexity, increased capacity, and system supports that are required to process CNS transactions at DTC.

(43) *Deliver order exception processing; Hold or release of pending DO that is recycling for insufficient position; Cancellation of pending DO.* Currently, a Participant is charged \$0.40 per item for “Hold or release of a pending DO that is recycling for insufficient position.” A Participant is currently charged \$0.20 per item for “Cancellation of pending DO.” Pursuant to the proposed rule change, the hold or release of a pending DO and the cancellation of a pending DO would each be charged a fee of \$0.24 per item, a weighted average that is based on the volume of each activity, under the fee name “Hold, cancel or release of pending DO that is recycling for insufficient position.” The purpose of the proposed rule change would be to (i) simplify the pricing structure by having one standard fee for similar activities and (ii) more closely align to DTC’s costs incurred in relation to providing the service for each type of DO exception processing.

#### C. Simplify the Pricing Structure/Promote Efficient Market Behavior (Fee Groupings With a Fee Change To Promote Efficient Market Behavior)

##### Custody and Securities Processing/Deposit Services/Reorganization Deposits

(44) *Mandatory (regular or legal); Redemption or call (regular or legal).* Currently, each of these reorganization deposit fees is \$90.00 per deposit. Pursuant to the proposed rule change, these fees would be consolidated and charged as a “Mandatory, Redemption or Call Deposits (regular or legal)” fee. Pursuant to the proposed rule change, the fee for “Mandatory, Redemption or Call Deposits (regular or legal)” would be \$60.00, a \$30.00 decrease from the current fees. The purpose of the proposed rule change would be to (i) simplify the pricing structure by having one standard fee for these related activities and (ii) incentivize Participants to utilize DTC to centralize, and enhance the efficiency of, the servicing of their securities.

##### Custody and Securities Processing/New York Window Services/Deliveries, and Custody and Securities Processing/New York Window Services/Receives

(45) *OTW<sup>21</sup> delivery (including government securities); OTW reclaim*

*delivery; OTW receive (including government receives); OTW reclaim receive.* Pursuant to the proposed rule change, these fees would be consolidated and charged as an “OTW delivery, receive or reclaim (including government securities)” fee. The condition for the proposed fee grouping would be modified to read: “Per delivery, per receive or per item for reclaim.” Pursuant to the proposed rule change, the fee for the new fee grouping would be reduced to \$40.00, a decrease of \$10.00 from the current fees. The purpose of the proposed rule change with respect to consolidating the fees would be to simplify the pricing structure by having one standard fee for these related activities. The purpose of the proposed rule change with respect to the reduction of the fee would be to encourage Participants to utilize the OTW services, by incentivizing the presentation of more physical securities to DTC’s central facility, and thereby promote processing efficiency.

##### Underwriting Services/Late Surcharges

(46) *Late receipt of LOR or BLOR (on closing date); Late closing (after 2:00 p.m. eastern time).* Currently, a Participant is charged a \$300.00 surcharge for a “Late receipt of LOR or BLOR (on closing date),” and is charged a \$400.00 surcharge for a “Late closing (after 2:00 p.m. eastern time).” Pursuant to the proposed rule change, these surcharges would be consolidated and charged as a “Late receipt of LOR or BLOR (on closing date) or Late Closing (after 2:00 p.m. eastern time)” surcharge of \$400. These surcharges are intended to align with DTC’s cost in relation to a late submission or closing, as well as to incentivize Participants to move through the underwriting process in a timely manner. As such, DTC is proposing a \$400.00 surcharge for this fee grouping, which would result in a surcharge increase of \$100.00 for late submissions of LORs and BLORs. DTC is proposing the amount of \$400 for the standard surcharge in order to standardize the amount of the surcharge, and to further encourage Participants to submit underwriting documentation in a timely manner.

##### D. Fee Realignment

##### Custody and Securities Processing/Corporate Actions/Allocation Fees

(47) *Mandatory Corporate Actions.* Pursuant to the proposed rule change, the fee would be reduced from \$80.00 to \$75.00. The purpose of the proposed rule change would be to align the fee with the costs of providing the service. The costs incurred by DTC are

decreasing because of certain streamlined processes that have resulted in the reduction of processing costs for this service.

##### Custody and Securities Processing/Corporate Actions/Voluntary Event Handling Fee

(48) *Voluntary Corporate Action Handling.* Pursuant to the proposed rule change, the fee would be reduced from \$95.00 to \$90.00. The purpose of the proposed rule change would be to align the fee with the costs of providing the service. The costs incurred by DTC are decreasing because of certain streamlined processes that have resulted in the reduction of processing costs for this service.

##### Settlement Services/Book-Entry Delivery, Excluding MMIs

(49) *Institutional receive or delivery (ID).* Pursuant to the proposed rule change, this fee would be reduced from \$0.05 per receive or delivery to \$0.04 per receive or delivery. The purpose of the proposed reduction would be to more closely align the fee with DTC’s decreased cost of providing the service, which is primarily handled as straight-through processing.

(50) *ID Net receive or delivery.* Pursuant to the proposed rule change, this fee would be reduced from \$0.025 per receive or delivery to \$0.02 per receive or delivery. The purpose of the proposed reduction would be to more closely align the fee with DTC’s decreased cost of providing the service, which is primarily handled as straight-through processing.

(51) *Fed DO.* Pursuant to the proposed rule change, this fee would be reduced from \$2.25 per item delivered or received to \$1.50 per item delivered or received. The purpose of the proposed reduction is to more closely align the fee with DTC’s cost of providing the service.

##### E. Promote Efficient Market Behavior

##### Custody and Securities Processing/Custody Services/Custody (Core Services)

(52) *Withdrawal and pickup (COD) between 8:30 a.m.–2:00 p.m.* Pursuant to the proposed rule change, the fee would be reduced from \$60.00 to \$50.00. The purpose of the proposed rule change would be to incentivize Participants to utilize DTC to centralize, and enhance the efficiency of, the servicing of their physical securities.

(53) *Withdrawal and pickup (COD) between 2:00 p.m.–4:30 p.m.* Pursuant to the proposed rule change, the fee would be reduced from \$100.00 to \$75.00. The purpose of the proposed rule change

<sup>21</sup> OTW is an acronym for “over-the-window.”

would be to incentivize Participants to utilize DTC to centralize, and enhance the efficiency of, the servicing of their physical securities.

(54) *Withdrawal and subsequent deposit.* Pursuant to the proposed rule change, the fee would be reduced from \$20.00 to \$15.00. The purpose of the proposed rule change would be to incentivize Participants to utilize DTC to centralize, and enhance the efficiency of, the servicing of their physical securities.

(55) *Withdrawal and shipment between 8:30 a.m.–2:00 p.m.* Pursuant to the proposed rule change, the fee would be reduced from \$70.00 to \$55.00. The purpose of the proposed rule change would be to incentivize Participants to utilize DTC to centralize, and enhance the efficiency of, the servicing of their physical securities.

(56) *Withdrawal and shipment between 2:00 p.m.–4:30 p.m.* Pursuant to the proposed rule change, the fee would be reduced from \$110.00 to \$80.00. The purpose of the proposed rule change would be to incentivize Participants to utilize DTC to centralize, and enhance the efficiency of, the servicing of their physical securities.

(57) *Custody reorg deposit.* Pursuant to the proposed rule change, the fee would be reduced from \$90.00 to \$60.00. The purpose of the proposed rule change would be to incentivize Participants to utilize DTC to centralize, and enhance the efficiency of, the servicing of their physical securities.

Custody and Securities Processing/  
Custody Services/Custody (Exception Processing)

(58) *Reorg research.* Pursuant to the proposed rule change, the fee would be reduced from \$110.00 to \$80.00. The purpose of the proposed rule change would be to incentivize Participants to utilize DTC to centralize, and enhance the efficiency of, the servicing of their physical securities.

Custody and Securities Processing/  
Deposit Services/Restricted Deposits

(59) *Restricted Deposit: Before 2:00 p.m.* Pursuant to the proposed rule change, the fee would be reduced from \$90.00 to \$60.00. The purpose of the proposed rule change would be to incentivize Participants to utilize the restricted deposit services to centralize, and enhance the efficiency of, the servicing of their physical securities.

(60) *Restricted Deposit: After 2:00 p.m. eastern time.* Pursuant to the proposed rule change, the fee would be reduced from \$110.00 to \$80.00. The purpose of the proposed rule change would be to incentivize Participants to

utilize the restricted deposit services to centralize, and enhance the efficiency of, the servicing of their physical securities.

(61) *Reject of restricted deposit.* Pursuant to the proposed rule change, this disincentive fee for rejections of restricted deposits would be eliminated. The purpose of the proposed rule change would be to remove any disincentive for Participants to utilize the restricted deposit service, and instead encourage Participants to utilize the restricted deposit service to centralize, and enhance the efficiency of, the servicing of their physical securities.

Settlement Services/Book-Entry  
Delivery, Excluding MMLs

(62) *Night deliver order.* Pursuant to the proposed rule change, the fee would be reduced from \$0.20 to \$0.17 per item; charged to deliverer; applies to each DO submitted. DTC is proposing to reduce this fee in order to encourage Participants to submit their transactions earlier in day. The earlier submission of transactions by Participants results in more efficient settlement processing by increasing the volume of transactions processed in the night-cycle, which, in turn, enhances intraday settlement processing.

(63) *Deliver order exception processing: Dropped DO not completed because of insufficient deliverer position or collateral.* Since the fee for “Dropped DO not completed because of insufficient deliverer position or collateral” may cause a Participant to delay making a particular delivery, the proposed rule change would eliminate the fee in order to encourage Participants to submit their transactions earlier in the day. The earlier submission of transactions by Participants results in more efficient settlement processing by increasing the volume of transactions processed in the night-cycle, which, in turn, enhances intraday settlement processing.

(64) *Deliver order exception processing: Insufficient receiver collateral or net debit cap.* Since the fee for “Insufficient receiver collateral or net debit cap” may cause a Participant to delay making a particular delivery, the proposed rule change would eliminate the fee in order to encourage Participants to submit their transactions earlier in the day. The earlier submission of transactions by Participants results in more efficient settlement processing by increasing the volume of transactions processed in the night-cycle, which, in turn, enhances intraday settlement processing.

F. Clarify the Fee Guide

DTC is proposing to amend the following provisions to clarify the Fee Guide:

Custody and Securities Processing/  
Securities Processing/Maintenance of  
Long Position (Registered Securities)

(65) *Average daily number of shares, rounded up to a multiple of 100 shares.* For clarity and transparency, the proposed rule change would amend the fee name to: “Average daily number of shares (stocks, bonds and registered muni), rounded up to a multiple of 100 shares.” The purpose of the proposed rule change is to clarify the types of securities that are included in the service.

(66) *BEO issue.* For clarity and transparency, the proposed rule change would amend the fee name to: “BEO issue (stocks, bonds and registered muni).” The purpose of the proposed rule change is to clarify the types of securities that are included in the service.

(67) *Medium-term note, money market instrument, and commercial paper.* For clarity and transparency, the proposed rule change would amend the fee name to: “Medium-term note, money market instrument, registered muni and commercial paper.” The purpose of the proposed rule change is to clarify the types of securities that are included in the service.

(68) *Issue that has been nontransferable for up to 6 years (surcharge).* For clarity and transparency, the proposed rule change would amend the fee name to: “Stock, bond, registered and bearer muni that have been nontransferable for up to 6 years (surcharge).” The purpose of the proposed rule change is to clarify the types of securities that are included in the service.

(69) *Issue that remains nontransferable after 6 years (surcharge).* For clarity and transparency, the fee name would be amended to: “Stock, bonds, registered and bearer muni that remain nontransferable after 6 years (surcharge).” The purpose of the proposed rule change is to clarify the types of securities that are included in the service.

(70) *Swing of security position (receive or deliver).* For clarity and transparency, the fee name would be amended to: “Swing of security position (receive, or deliver (including stock dividend deliver)).” The purpose of the proposed rule change is to clarify the types of securities that are included in the service.

## Underwriting Services/Eligibility Fees

(71) *Equity Eligibility—Additional CUSIP Fee.* For clarity and transparency, the first line of the fee condition would be modified to read: “Per additional CUSIP;”. The purpose of the proposed rule change is to accurately reflect the existing underwriting fee-per-CUSIP structure, which consists of an initial fixed fee for the first CUSIP and an incremental fee for each additional CUSIP.<sup>22</sup>

(72) *Debt Eligibility—Additional CUSIP Fee.* For clarity and transparency, the first line of the fee condition would be modified to read: “Per additional CUSIP;”. The purpose of the proposed rule change is to accurately reflect the existing underwriting fee-per-CUSIP structure, which consists of an initial fixed fee for the first CUSIP and an incremental fee for each additional CUSIP.<sup>23</sup>

## Expected Participant Impact

In general, DTC anticipates that the proposed rule change would (i) have no impact on approximately 30% of Participants, (ii) result in fee reductions for approximately 49% of Participants, and (iii) result in fee increases for approximately 21% of Participants. These estimates were calculated against 2017 volume figures. In terms of the estimated fee increases, approximately 38% would have an increase of less than \$1,000 per year, approximately 22% would have an increase between \$1,000 and \$10,000 per year, approximately 38% would have an increase between \$10,000 and \$75,000 per year, and approximately 2% would have an increase between \$100,000 and \$200,000 per year. These estimated impacts correlate to a Participant's business model and its use of the services affected by the proposed rule change. Taken collectively, the proposed rule change would reduce DTC's revenue by approximately 1%.

## Participant Outreach

Beginning in June 2018, DTC has conducted outreach to Participants in order to provide them with notice of the proposed changes to the affected fees. As of the date of this filing, no written comments relating to the proposed changes have been received in response to this outreach. The Commission will be notified of any written comments received.

## Implementation Timeframe

DTC would implement this proposal on January 1, 2019. As proposed, a legend would be added to the Fee Guide stating there are changes that became effective upon filing with the Commission but have not yet been implemented. The proposed legend also would include a date on which such changes would be implemented and the file number of this proposal, and state that, once this proposal is implemented, the legend would automatically be removed from the Fee Guide.

## 2. Statutory Basis

DTC believes that this proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. Specifically, DTC believes that this proposal is consistent with Sections 17A(b)(3)(D)<sup>24</sup> and 17A(b)(3)(F)<sup>25</sup> of the Act and Rule 17Ad-22(e)(23)(ii),<sup>26</sup> as promulgated under the Act, for the reasons described below.

(i) Section 17A(b)(3)(D) of the Act requires, *inter alia*, that the Rules provide for the equitable allocation of reasonable dues, fees, and other charges among participants.<sup>27</sup> For the reasons set forth below, DTC believes that each of the proposed rule changes described above in Items II(A)1(ii)A–F would provide for the equitable allocation of reasonable dues, fees, and other charges among participants.

## A. Simplify the Pricing Structure

DTC believes that each of the proposed rule changes described in Items II(A)1(ii)A(x) (Simplify the Pricing Structure: Fee Groupings) and II(A)1(ii)A(y) (Simplify the Pricing Structure: Deletion of Fees with Little or No Volume) would provide for the equitable allocation of reasonable fees. Each of the proposed rule changes described in Item II(A)1(ii)A(x) would consolidate individual fee line items into a single fee line item. Each of the proposed rule changes described in Item II(A)1(ii)A(y) would delete a fee with little or no volume. Each fee for a service as described in Items II(A)1(ii)A(x) and II(A)1(ii)A(y) would continue to be charged (or not charged, with respect to the proposed fee deletions) to a Participant in accordance with (i) its utilization of the service, and (ii) the fee condition set forth in the Fee Guide, and would therefore be equitably allocated. In addition, the proposed rule

changes described in Item II(A)1(ii)A(x) would not affect current fees, and would therefore continue to provide for reasonable fees. Further, the proposed rule changes described in Item II(A)1(ii)A(y), which would delete fees that have little or no volume, would be commensurate with DTC's minimal cost of providing the relevant service. Therefore, DTC believes that each of the proposed rule changes described in Items II(A)1(ii)A(x) and II(A)1(ii)A(y) would not affect the allocation or amount of fees, and would thereby continue to provide for the equitable allocation of reasonable fees, consistent with Section 17A(b)(3)(D) of the Act.<sup>28</sup>

## B. Fee Realignment

DTC believes that each of the proposed rule changes with respect to the proposed realignment of fees, as described in Items II(A)1(ii)B (Simplify the Pricing Structure/Fee Realignment)<sup>29</sup> and II(A)1(ii)D (Fee Realignment), would provide for the equitable allocation of reasonable fees. Each proposed fee for a service as described in Items II(A)1(ii)B and D would continue to be charged to a Participant in accordance with (i) its utilization of the service, and (ii) the fee condition set forth in the Fee Guide. DTC believes that, pursuant to the proposed rule changes described in Items II(A)1(ii)B and D, the proposed fees would continue to be equitably allocated because all Participants that utilize a particular service would be treated equally with respect to these fees under the proposal.<sup>30</sup>

DTC believes that each of the proposed rule changes described in Items II(A)1(ii)B (Simplify the Pricing Structure/Fee Realignment) and II(A)1(ii)D (Fee Realignment) would provide for reasonable fees. First, as discussed above, most of the proposed fee realignments described in Items II(A)1(ii)B and D would result in a fee reduction for a service. As described above, these fee reductions are being

<sup>28</sup> *Id.*

<sup>29</sup> DTC believes that the consolidation of fee line items, in and of itself, would not affect the allocation or amount of fees. Therefore, to the extent that a proposed rule change described in Item II(A)1(ii)B (Simplify the Pricing Structure/Fee Realignment) addresses the consolidation of fee line items, DTC believes that such proposed rule change would continue to provide for the equitable allocation of reasonable fees. *See supra* Item II(A)2(i)A.

<sup>30</sup> As discussed above in the section titled “Expected Participant Impact,” the proposed rule change may result in fee increases or fee decreases for some Participants. A Participant may be impacted differently than another Participant due to its use of the various services with fees that would be affected by the proposed rule change, pursuant to its own particular business structure.

<sup>22</sup> Securities Exchange Act Release No. 71206 (December 30, 2013), 79 FR 690 (January 6, 2014) (SR-DTC–2013–12).

<sup>23</sup> *Id.*

<sup>24</sup> 15 U.S.C. 78q–1(b)(3)(D).

<sup>25</sup> 15 U.S.C. 78q–1(b)(3)(F).

<sup>26</sup> 17 CFR 240.17Ad–22(e)(23)(ii).

<sup>27</sup> 15 U.S.C. 78q–1(b)(3)(D).

proposed due to (i) declining volumes in connection with the service requiring fewer DTC resources and/or (ii) certain streamlined processes having resulted in the reduction of processing costs for DTC in connection with the service. In both cases, DTC, through the proposed fee reductions, would be passing along its cost savings to Participants. Therefore, DTC believes that such proposed fee reductions would continue to provide for the allocation of reasonable fees among Participants. Second, as discussed above, a few proposed fee realignments, as described in Items II(A)1(ii)B(41)–(43),<sup>31</sup> would result in an increase to a fee for a service. Such proposed fee increases would allow those fees to remain commensurate with the costs of resources allocated by DTC in connection with the relevant services. The proposed fee increases to align with the costs incurred by DTC in providing the service would allow DTC to efficiently offer the service. Therefore, DTC believes that the proposed rule changes described in Items II(A)1(ii)B and D, would provide for the equitable allocation of reasonable fees, consistent with Section 17A(b)(3)(D) of the Act.<sup>32</sup>

#### C. Promote Efficient Market Behavior

DTC believes that each of the proposed rule changes described in Items II(A)1(ii)C (Simplify the Pricing Structure/Promote Efficient Market Behavior)<sup>33</sup> and II(A)1(ii)E (Promote Efficient Market Behavior) would provide for the equitable allocation of reasonable fees. Each proposed fee for a service as described in Items II(A)1(ii)C and E would continue to be charged to a Participant in accordance with (i) its utilization of the service, and (ii) the fee condition set forth in the Fee Guide. DTC believes that, pursuant to the proposed rule changes described in Items II(A)1(ii)C and E, the proposed fees would continue to be equitably allocated because all Participants that utilize a particular service (or submit a late BLOR or LOR) would be treated equally with respect to these fees under the proposal.<sup>34</sup>

DTC believes that each of the proposed rule changes described in Items II(A)1(ii)C (Simplify the Pricing Structure/Promote Efficient Market Behavior) and II(A)1(ii)E (Promote Efficient Market Behavior) would provide for reasonable fees. First, with the exception of the surcharge for the late submission of a LOR or BLOR, the proposed fee changes described in Items II(A)1(ii)C and E would reduce fees to encourage Participant use of certain DTC services that promote efficiency in the handling of physical securities or the processing of securities transactions for settlement. As such, DTC believes that these proposed fee reductions would result in reasonable fees because the use of these efficiencies offered by DTC could result in future decreased processing costs for Participants and for DTC, which, in turn, could be passed along to Participants. Second, DTC is proposing to increase the surcharge for the late submission of a LOR or BLOR from \$300 to \$400 in order to increase the incentive for a Participant to submit its underwriting documentation in a timely manner. DTC believes that the increase of this surcharge would be reasonable because Participants are already accustomed to the \$400.00 surcharge for late closings, which is being consolidated into one line item with the late submission of LORs and BLORs surcharge. DTC also believes that the proposed fee would be reasonable because (i) the increase would be a modest amount (\$100) that would only apply when a Participant submits a late LOR or BLOR, and (ii) a Participant can avoid the surcharge by submitting the LOR or BLOR on time. Therefore, DTC believes that each of the proposed rule changes described in Items II(A)1(ii)C and E would provide for the equitable allocation of reasonable fees, consistent with Section 17A(b)(3)(D) of the Act.<sup>35</sup>

#### D. Clarify the Fee Guide

DTC believes that each of the proposed rule changes described in Item II(A)1(ii)F (Clarify the Fee Guide) would provide for the equitable allocation of reasonable fees among participants. Each of the proposed rule changes described in II(A)1(ii)F would clarify a fee line item without affecting the amount of the existing fee for such line item. Each fee for a service as described in Item II(A)1(ii)F would continue to be charged to a Participant in accordance with (i) its utilization of the service, and (ii) the fee condition set forth in the Fee Guide. Therefore, DTC believes that each of the proposed rule changes described in Item II(A)1(ii)F would not

affect the allocation or amount of fees, and would thereby continue to provide for the equitable allocation of reasonable fees, consistent with Section 17A(b)(3)(D) of the Act.<sup>36</sup>

For the foregoing reasons, DTC believes that each of the proposed rule changes described in Items II(A)1(ii)A–F would provide for the equitable allocation of reasonable dues, fees, and other charges among participants, consistent with Section 17A(b)(3)(D) of the Act.<sup>37</sup>

(ii) Section 17A(b)(3)(F) of the Act requires, *inter alia*, that the Rules be designed to promote the prompt and accurate clearance and settlement of securities transactions.<sup>38</sup> For the reasons set forth below, DTC believes that each of the proposed rule changes described in Items II(A)1(ii)A–F is designed to promote the prompt and accurate clearance and settlement of securities transactions.

#### A. Simplify the Fee Guide

DTC believes that each of the proposed rule changes with respect to the consolidation of individual fee line items or deletion of fees, as described in Items II(A)1(ii)A(x) (Simplify the Pricing Structure: Fee Groupings), II(A)1(ii)A(y) (Simplify the Pricing Structure: Deletion of Fees with Little or No Volume), II(A)1(ii)B (Simplify the Pricing Structure/Fee Realignment), and II(A)1(ii)C (Simplify the Pricing Structure/Promote Efficient Market Behavior) is designed to promote the prompt and accurate clearance and settlement of securities transactions. DTC is proposing changes, as described in Items II(A)1(ii)A(x), II(A)1(ii)A(y), II(A)1(ii)B, and II(A)1(ii)C, that are designed to improve the accuracy and clarity of the Fee Guide by simplifying the Fee Guide through fee groupings or through the deletion of fees with little or no volume. Improving the accuracy and clarity of the Rules and Procedures, including the Fee Guide, would help Participants to better understand their rights and obligations regarding DTC services. When Participants better understand their rights and obligations regarding DTC services, they can act in accordance with the Rules and Procedures, which DTC believes would promote the prompt and accurate clearance and settlement of securities transactions by DTC. As such, DTC believes the proposed rule changes to simplify and clarify the Fee Guide are

<sup>31</sup> Per email instruction from DTC's legal staff on December 4, 2018, Commission staff revised this reference to correct a typographical error, changing "B(43)–(45)" to "B(41)–(43)."

<sup>32</sup> 15 U.S.C. 78q–1(b)(3)(D).

<sup>33</sup> DTC believes that the consolidation of fee line items, in and of itself, would not affect the allocation or amount of fees. Therefore, to the extent that a proposed rule change described in Item II(A)1(ii)C (Simplify the Pricing Structure/Promote Efficient Market Behavior) addresses the consolidation of fee line items, DTC believes that such proposed rule change would continue to provide for the equitable allocation of reasonable fees. See *supra* Items II(A)2(i)A and B.

<sup>34</sup> See *supra* note 30.

<sup>35</sup> 15 U.S.C. 78q–1(b)(3)(D).

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> 15 U.S.C. 78q–1(b)(3)(F).



consistent with Section 17A(b)(3)(F) of the Act.<sup>39</sup>

#### B. Fee Realignment

DTC believes that each of the proposed rule changes with respect to the proposed realignment of fees, as described in Items II(A)1(ii)B (Simplify the Pricing Structure/Fee Realignment) and II(A)1(ii)D (Fee Realignment) is designed to promote the prompt and accurate clearance and settlement of securities transactions. First, most of the proposed fee realignments described in Items II(A)1(ii)B and D would result in a fee reduction for a service to align with DTC's decreased costs in providing the service. Second, DTC would increase certain fees to align with the higher costs incurred by DTC in providing the relevant service. By aligning fees with costs, each of the proposed rule changes would add efficiency to the market by allowing a Participant to more accurately evaluate the value of a service and to make efficient decisions about the allocation of its resources within its business. In addition, the proposal to increase certain fees to align with the higher costs incurred by DTC in providing the service would allow DTC to more efficiently offer the related service and to continue to appropriately manage its resources for all its services. In this way, each of the proposed rule changes with respect to the proposed realignment of fees, as described in Items II(A)1(ii)B and II(A)1(ii)D would enable DTC continue to efficiently provide prompt and accurate clearance and settlement services to its Participants.

#### C. Promote Efficient Market Behavior

DTC believes that each of the proposed rule changes described in Items II(A)1(ii)C (Simplify the Pricing Structure/Promote Efficient Market Behavior) and II(A)1(ii)E (Promote Efficient Market Behavior) is designed to promote the prompt and accurate clearance and settlement of securities transactions. First, DTC is proposing to reduce or eliminate fees for certain settlement services in order to encourage Participants to submit their transactions earlier in the day. By encouraging the earlier submission of securities transactions by Participants, the proposed rule change is designed to promote efficient settlement processing by increasing the volume of transactions processed in the night-cycle, which, in turn, enhances intraday settlement processing of securities transactions. Therefore, by encouraging behavior that would promote efficient settlement

processing of securities transactions, DTC believes that the proposed rule changes with respect to the reduction or elimination of fees for certain settlement services are designed to promote the prompt and accurate clearance and settlement of securities transactions.

Second, DTC is proposing to reduce certain fees for its Custody Service in order to encourage Participants to centralize the servicing of their physical securities at DTC, which already services the securities deposited at DTC by Participants for book-entry services. By utilizing the Custody Service, a Participant is able to benefit from, among other things, cost savings from the economies of scale offered by DTC, and the added efficiency of the limited depository services offered by DTC with respect to securities held in its Custody Service. Therefore, by encouraging behavior that would promote added efficiency to the processing and handling of physical securities, DTC believes that the proposed rules changes to reduce certain fees for its Custody Service in order to encourage Participants to centralize the servicing of their physical securities at DTC are designed to promote the prompt and accurate clearance and settlement of securities transactions.

Third, DTC is proposing to increase an underwriting surcharge for the late submission of a LOR or BLOR in order to encourage Participants to submit underwriting documentation in a timely manner. In this way, the proposed rule change is designed to deter behavior that could delay the prompt and accurate clearance and settlement of transactions in that security. Therefore, by deterring behavior that could delay the prompt and accurate settlement of transactions in a security, DTC believes that the proposed rule changes are designed to promote the prompt and accurate clearance and settlement of securities transactions.

#### D. Clarify the Fee Guide

DTC believes that each of the proposed rule changes described in Item II(A)1(ii)F (Clarify the Fee Guide) is designed to promote the prompt and accurate clearance and settlement of securities transactions. Each of these changes would amend certain headings, fee names, and fee conditions to improve the accuracy and clarity of the Fee Guide. Improving the accuracy and clarity of the Rules and Procedures, including the Fee Guide, would help Participants to better understand their rights and obligations regarding DTC services. When Participants better understand their rights and obligations regarding DTC services, they can act in

accordance with the Rules and Procedures, which DTC believes would promote the prompt and accurate clearance and settlement of securities transactions by DTC. As such, DTC believes the proposed rule changes to clarify the Fee Guide, as described in Item II(A)1(ii)F, are consistent with Section 17A(b)(3)(F) of the Act.<sup>40</sup>

For the foregoing reasons, DTC believes that each of the proposed rule changes described in Items II(A)1(ii)A–F are designed to promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.<sup>41</sup>

(iii) Rule 17Ad–22(e)(23)(ii) under the Act requires DTC to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in DTC.<sup>42</sup>

DTC believes that the proposed rule changes with respect to (1) simplifying the pricing structure of the Fee Guide through (x) fee groupings, as described in Items II(A)1(ii)A(x) (Simplify the Pricing Structure: Fee Groupings), II(A)1(ii)B (Simplify the Pricing Structure/Fee Realignment), and II(A)1(ii)C (Simplify the Pricing Structure/Promote Efficient Market Behavior), and (y) deleting fees with little or no volume, as described in Item II(A)1(ii)A(y) (Simplify the Pricing Structure: Deletion of Fees with Little or No Volume), and (2) clarifying the Fee Guide, as described in Item II(A)1(ii)F, by amending conditions and headings and by making conforming changes, would help ensure that the pricing structure of the Fee Guide is well-defined and clear to Participants. Having a well-defined and clear Fee Guide would help Participants to better understand the fees and help provide Participants with increased predictability and certainty regarding the fees they incur in participating in DTC. In this way, DTC believes the proposed rule changes to simplify the pricing structure of the Fee Guide and to clarify the Fee Guide, as described in Items II(A)1(ii)A(x), II(A)1(ii)A(y), II(A)1(ii)B, II(A)1(ii)C, and II(A)1(ii)F are consistent with Rule 17Ad–22(e)(23)(ii) under the Act, cited above.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> 17 CFR 240.17Ad–22(e)(23)(iii).

*(B) Clearing Agency's Statement on Burden on Competition**(i) Simplify the Fee Guide*

*No Impact on Competition.* DTC believes that each of the proposed rule changes with respect to the consolidation of individual fee line items, as described in Item II(A)1(ii)A(x) (Simplify the Pricing Structure: Fee Groupings), would not have an impact on competition.<sup>43</sup> These proposed rule changes would improve the accuracy and clarity of the Fee Guide by simplifying the Fee Guide through fee groupings. Having an accurate and clear Fee Guide would facilitate Participants' understanding of the Fee Guide and their obligations thereunder, and so would not affect the rights and obligations of any Participant or other interested party. Therefore, DTC does not believe that the proposed changes with respect to the consolidation of individual fee line items, as described in Item II(A)1(ii)A(x), would have an impact on competition.

*Impact on Competition.* DTC believes that each of the proposed rule changes with respect to the deletion of fees with little or no volume, as described in Item II(A)1(ii)A(y) (Simplify the Pricing Structure: Deletion of Fees with Little or No Volume), may impact competition by potentially reducing Participants' operating costs. Therefore, DTC believes that the proposed rule changes with respect to the deletion of fees with little or no volume, as described in Item II(A)1(ii)A(y), would not impose a burden on competition, but may promote competition.

*(ii) Fee Realignment*

*Impact on Competition.* DTC believes that each of the proposed rule changes with respect to the proposed adjustment of fees to align with DTC's costs, as described in Items II(A)1(ii)B (Simplify the Pricing Structure/Fee Realignment)<sup>44</sup> and II(A)1(ii)D (Fee Realignment), may have an impact on competition, because these changes would result in either a fee decrease or fee increase to Participants for the relevant service.<sup>45</sup>

First, the proposed rule changes that would result in a fee reduction for a service could promote competition by potentially reducing Participants' operating costs. Therefore DTC believes that the proposed rule changes to reduce fees in order to better align with costs would not impose a burden on

competition, but may promote competition. Second, the proposed rule changes that would result in a fee increase for a service may impact competition by creating a burden on competition by negatively affecting such Participants' operating costs. However, DTC believes that any burden on competition that may be caused by these proposed rule changes would not be significant and would be necessary and appropriate in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act.<sup>46</sup>

*Burden on Competition Would Not Be Significant.* DTC believes the burden on competition that may be imposed by the proposed fee increase for a non-Municipal Bearer Bond Service COD, as described in Item II(A)1(ii)B(41),<sup>47</sup> would not be significant because it would be a nominal amount (\$60.00) where Participants are already accustomed to paying a \$300.00 fee for a similar service within the proposed fee grouping. In addition, DTC believes that the burden on competition that may be imposed by the proposed fee increase for receives from CNS, as described in Item II(A)1(ii)B(42),<sup>48</sup> would not be significant. Even though the amount of the fee increase may appear significant relative to the current fee (a proposed increase from \$0.035 to \$0.08), DTC believes that the fee increase does not, in and of itself, mean that the burden on competition is significant. DTC does not believe that the fee increase would impose a significant burden on competition, because the impact of the fee increase would correlate to a Participant's particular business model and how CNS fits into that model, and therefore, Participants with similar business models and relationships with CNS would be similarly impacted. Finally, DTC believes that the burden on competition that may be imposed by the proposed fee increase for the cancellation of pending DO, as described in Item II(A)1(ii)B(43),<sup>49</sup> would not be significant because the increase would be a nominal amount (\$0.04) and the activity that triggers the fee occurs infrequently. Therefore, DTC believes that any burden on competition that may be caused by the proposed rule

changes addressed immediately above would be insignificant.

*Burden on Competition Would Be Necessary and Appropriate.* DTC believes that any insignificant burden on competition that may be imposed by the proposed rule changes addressed immediately above would be necessary and appropriate in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act.<sup>50</sup> As discussed above, DTC believes that the proposed rule changes would (1) provide for the equitable allocation of reasonable fees,<sup>51</sup> as required by Section 17A(b)(3)(D) of the Act,<sup>52</sup> and (2) promote the prompt and accurate clearance and settlement of securities transactions,<sup>53</sup> consistent with Section 17A(b)(3)(F) of the Act.<sup>54</sup> Therefore, DTC believes that any insignificant burden on competition that may be imposed by the proposed rule changes addressed immediately above would be necessary and appropriate in furtherance of the purposes of the Act, specifically Section 17A(b)(3)(D) of the Act and Section 17A(b)(3)(F) of the Act, respectively, as permitted by Section 17A(b)(3)(I) of the Act.<sup>55</sup>

*(iii) Promote Efficient Market Behavior*

*Impact on Competition.* DTC believes that each of the proposed adjustments of certain fees to encourage efficient market behavior, as described in Items II(A)1(ii)C (Simplify the Pricing Structure/Promote Efficient Market Behavior)<sup>56</sup> and II(A)1(ii)E (Promote Efficient Market Behavior), may have an impact on competition, because these proposed adjustments would result in either a fee decrease or fee increase to Participants for the relevant service.<sup>57</sup> First, DTC believes that each of the proposed fee reductions for a service could promote competition by potentially reducing Participants' operating costs. Based on the foregoing, DTC believes that each of the proposed reduction of certain fees in order to promote efficient market behavior, as described in Items II(A)1(ii)C and II(A)1(ii)E, would not impose a burden on competition, but may promote competition. Second, DTC believes that the proposed increase of the surcharge for the late submission of a LOR or BLOR may impact competition, because

<sup>46</sup> *Id.*

<sup>47</sup> Per email instruction from DTC's legal staff on December 4, 2018, Commission staff revised this reference to correct a typographical error, changing "B(43)" to "B(41)."

<sup>48</sup> Per email instruction from DTC's legal staff on December 4, 2018, Commission staff revised this reference to correct a typographical error, changing "B(44)" to "B(42)."

<sup>49</sup> Per email instruction from DTC's legal staff on December 4, 2018, Commission staff revised this reference to correct a typographical error, changing "B(45)" to "B(43)."

<sup>50</sup> *Id.*

<sup>51</sup> See *supra* Item II(A)2(ii)B.

<sup>52</sup> 15 U.S.C. 78q-1(b)(3)(D).

<sup>53</sup> See *supra* Item II(A)2(ii)B.

<sup>54</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>55</sup> 15 U.S.C. 78q-1(b)(3)(I).

<sup>56</sup> DTC believes that the consolidation of fee line items, in and of itself, would not have an impact on competition. See *supra* Item II(B)(i).

<sup>57</sup> 15 U.S.C. 78q-1(b)(3)(I).

<sup>43</sup> 15 U.S.C. 78q-1(b)(3)(I).

<sup>44</sup> DTC believes that the consolidation of fee line items, in and of itself, would not have an impact on competition. See *supra* Item II(B)(i).

<sup>45</sup> 15 U.S.C. 78q-1(b)(3)(I).

it could create a burden on competition by negatively affecting such Participants' operating costs. However, DTC believes that the burden on competition would not be significant and would be necessary and appropriate in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act.<sup>58</sup>

**Burden on Competition Would Not Be Significant.** DTC believes that any burden on competition that may be imposed by the proposed increase of the surcharge for the late submission of a LOR or BLOR would be insignificant because (1) the increase would be a modest amount (\$100) that would only apply when a Participant submits a late LOR or BLOR, and (2) a Participant can avoid the surcharge by submitting the LOR or BLOR on time.

**Burden on Competition Would Be Necessary and Appropriate.** DTC believes that any insignificant burden on competition that is created by the proposed increase of the surcharge for the late submission of a LOR or BLOR would be necessary and appropriate in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act.<sup>59</sup> As discussed above, DTC believes that the proposed rule changes would (1) provide for the equitable allocation of reasonable fees,<sup>60</sup> as required by Section 17A(b)(3)(D) of the Act,<sup>61</sup> and (2) promote the prompt and accurate clearance and settlement of securities transactions,<sup>62</sup> consistent with Section 17A(b)(3)(F) of the Act.<sup>63</sup> Therefore, DTC believes that any insignificant burden on competition that may be imposed by the proposed rule changes addressed immediately above would be necessary and appropriate in furtherance of the purposes of the Act, specifically Section 17A(b)(3)(D) of the Act and Section 17A(b)(3)(F) of the Act, respectively, as permitted by Section 17A(b)(3)(I) of the Act.<sup>64</sup>

(iv) Clarify the Fee Guide

**No Impact on Competition.** DTC believes that each of the proposed clarifications to the Fee Guide, as described in Item II(A)1(ii)F (Clarify the Fee Guide), would not have an impact on competition.<sup>65</sup> Each of these changes would amend certain headings, fee names, and fee conditions to improve the accuracy and clarity of the Fee Guide. Having an accurate and clear Fee

Guide would facilitate Participants' understanding of the Fee Guide and their obligations thereunder, and so would not affect the rights and obligations of any Participant or other interested party. Therefore, DTC believes that each of the proposed clarifications to the Fee Guide, as described in Item II(A)1(ii)F (Clarify the Fee Guide), would not have an impact on competition.

**(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others**

Written comments relating to this proposed rule change have not been solicited or received. DTC will notify the Commission of any written comments received by DTC.

**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<sup>66</sup> and paragraph (f) of Rule 19b-4 thereunder.<sup>67</sup> At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

**Electronic Comments**

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-DTC-2018-011 on the subject line.

**Paper Comments**

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR-DTC-2018-011. 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 DTC and on DTCC's website (<http://dtcc.com/legal/sec-rule-filings.aspx>). 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-DTC-2018-011 and should be submitted on or before January 4, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>68</sup>

**Eduardo A. Aleman,**

*Deputy Secretary.*

[FR Doc. 2018-27078 Filed 12-13-18; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-84767; File No. SR-NYSE-2018-59]**

**Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Period for the Exchange's Retail Liquidity Program Until the Earlier of Approval of the Filing To Make the Program Permanent or June 30, 2019**

December 10, 2018.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 ("Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on November

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> See *supra* Item II(A)2(i)C.

<sup>61</sup> 15 U.S.C. 78q-1(b)(3)(D).

<sup>62</sup> See *supra* Item II(A)2(ii)C.

<sup>63</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>64</sup> 15 U.S.C. 78q-1(b)(3)(I).

<sup>65</sup> *Id.*

<sup>66</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>67</sup> 17 CFR 240.19b-4(f).

<sup>68</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

30, 2018, New York Stock Exchange LLC (“NYSE” or “Exchange”) 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 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 extend the pilot period for the Exchange’s Retail Liquidity Program (the “Retail Liquidity Program” or the “Program”), which is currently scheduled to expire on December 31, 2018, until the earlier of approval of the filing to make the Program permanent or June 30, 2019. The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://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 extend the pilot period for the Retail Liquidity Program, currently scheduled to expire on December 31, 2018,<sup>4</sup> until the earlier of approval of the filing to make the Program permanent or June 30, 2019.

##### **Background**

In July 2012, the Commission approved the Retail Liquidity Program on a pilot basis.<sup>5</sup> The Program is designed to attract retail order flow to

the Exchange, and allows such order flow to receive potential price improvement. The Program is currently limited to trades occurring at prices equal to or greater than \$1.00 per share. Under the Program, Retail Liquidity Providers (“RLPs”) are able to provide potential price improvement in the form of a non-displayed order that is priced better than the Exchange’s best protected bid or offer (“PBBO”), called a Retail Price Improvement Order (“RPI”). When there is an RPI in a particular security, the Exchange disseminates an indicator, known as the Retail Liquidity Identifier, indicating that such interest exists. Retail Member Organizations (“RMOs”) can submit a Retail Order to the Exchange, which would interact, to the extent possible, with available contra-side RPIs.

The Retail Liquidity Program was approved by the Commission on a pilot basis. Pursuant to NYSE Rule 107C(m), the pilot period for the Program is scheduled to end on December 31, 2018.

##### **Proposal To Extend the Operation of the Program**

The Exchange established the Retail Liquidity Program in an attempt to attract retail order flow to the Exchange by potentially providing price improvement to such order flow. The Exchange believes that the Program promotes competition for retail order flow by allowing Exchange members to submit RPIs to interact with Retail Orders. Such competition has the ability to promote efficiency by facilitating the price discovery process and generating additional investor interest in trading securities, thereby promoting capital formation. The Exchange believes that extending the pilot is appropriate because it will allow the Exchange and the Commission additional time to analyze data regarding the Program that the Exchange has committed to provide and consider the Exchange’s filing to make the filing permanent.<sup>6</sup> As such, the Exchange believes that it is appropriate to extend the current operation of the Program.<sup>7</sup> Through this filing, the Exchange seeks to amend NYSE Rule 107C(m)<sup>8</sup> and extend the

<sup>6</sup> See *id.* at 40681; see also SR–NYSE–2018–28 (filing to make Rule 107C, which sets forth the Exchange’s Retail Liquidity Program, permanent).

<sup>7</sup> Concurrently with this filing, the Exchange has submitted a request for an extension of the exemption under Regulation NMS Rule 612 previously granted by the Commission that permits it to accept and rank the undisplayed RPIs. See Letter from Martha Redding, Associate General Counsel and Asst. Corporate Secretary, NYSE Group, Inc., to Brent J. Fields, Secretary, Securities and Exchange Commission, dated November 30, 2018.

<sup>8</sup> The Exchange notes that the proposed amendment to Rule 107C(m) would amend the

current pilot period of the Program until the earlier of approval of the filing to make the Program permanent or June 30, 2019.

##### **2. Statutory Basis**

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>10</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that extending the pilot period for the Retail Liquidity Program is consistent with these principles because the Program is reasonably designed to attract retail order flow to the exchange environment, while helping to ensure that retail investors benefit from the better price that liquidity providers are willing to give their orders. Additionally, as previously noted, the competition promoted by the Program may facilitate the price discovery process and potentially generate additional investor interest in trading securities. The extension of the pilot period will allow the Commission and the Exchange to continue to monitor the Program for its potential effects on public price discovery, and on the broader market structure.

#### **B. Self-Regulatory Organization’s Statement on Burden on Competition**

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change simply extends an established pilot program for an additional six months, thus allowing the Retail Liquidity Program to enhance competition for retail order flow and contribute to the public price discovery process.

#### **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.

current version of Rule 107C(m), which the Exchange also proposes to amend as part of the Exchange’s filing to make Rule 107C permanent. See SR–NYSE–2018–28.

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>4</sup> See Securities Exchange Act Release No. 83540 (June 28, 2018), 83 FR 31234 (July 3, 2018) (SR–NYSE–2018–29).

<sup>5</sup> See Securities Exchange Act Release No. 67347 (July 3, 2012), 77 FR 40673 (July 10, 2012) (SR–NYSE–2011–55) (“RPL Approval Order”).

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup> Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>13</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>14</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

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)<sup>15</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2018-59 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2018-59. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2018-59 and should be submitted on or before January 4, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Eduardo A. Aleman,**

*Deputy Secretary.*

[FR Doc. 2018-27077 Filed 12-13-18; 8:45 am]

**BILLING CODE 8011-01-P**

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84766; File No. SR-NYSE-2018-28]

#### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Designation of Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule To Make Permanent the Retail Liquidity Program Pilot, Which is Set To Expire on December 31, 2018

December 10, 2018.

On June 4, 2018, New York Stock Exchange LLC ("Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to make permanent the Exchange's Retail Liquidity Program Pilot ("Program"). The proposed rule change was published for comment in the **Federal Register** on June 21, 2018.<sup>3</sup> On July 31, 2018, the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.<sup>4</sup> On September 18, 2018, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act<sup>5</sup> to determine whether to approve or disapprove the proposed rule change.<sup>6</sup> The Commission received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act<sup>7</sup> provides that, after initiating proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may, however, extend the period for issuing an order approving or disapproving the proposed rule change by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 83454 (June 15, 2018), 83 FR 28874 ("Notice").

<sup>4</sup> See Securities Exchange Act Release No. 83749, 83 FR 38393 (August 6, 2018). The Commission designated September 19, 2018, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

<sup>5</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>6</sup> See Securities Exchange Act Release No. 84183, 83 FR 48350 (September 24, 2018) ("Order Instituting Proceedings").

<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>15</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>16</sup> 17 CFR 200.30-3(a)(12).

reasons for such determination. The proposed rule change was published for notice and comment in the **Federal Register** on June 21, 2018.<sup>8</sup> December 18, 2018 is 180 days from that date, and February 16, 2019 is 240 days from that date. The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change.<sup>9</sup>

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> designates February 16, 2019 as the date by which the Commission should either approve or disapprove the proposed rule change (File No. SR–NYSE–2018–28).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Eduardo A. Aleman,**  
Deputy Secretary.

[FR Doc. 2018–27076 Filed 12–13–18; 8:45 am]

BILLING CODE 8011–01–P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84769; File No. SR–FICC–2018–012]

### Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Remove Certain Fees From the Mortgage-Backed Securities Division Clearing Rules and Electronic Pool Notification Rules

December 10, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> notice is hereby given that on November 26, 2018, Fixed Income Clearing Corporation (“FICC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. FICC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b–4(f)(2) thereunder.<sup>4</sup> The

Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of modifications to the FICC’s Mortgage-Backed Securities Division (“MBSD”) Clearing Rules (“Clearing Rules”) and the MBSD electronic pool notification (“EPN”) Rules (“EPN Rules,” and together with the Clearing Rules, “Rules”) to remove certain fees, as described below.<sup>5</sup>

#### II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

##### (A) Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

FICC recently completed a strategic review of its revenue and pricing strategy. The goal of the review was to enhance pricing for the Clearing Members and EPN Users (collectively referred to herein as “participants”) of MBSD and participants of FICC’s Government Securities Division (“GSD”).<sup>6</sup> This effort was intended to align fees for services with the cost of providing those services, reduce the complexity of fee structures, and increase the overall transparency of the fees charged for services.

As a result of this review, FICC is proposing to revise the Rules to remove the following fees: (1) MBSD’s Surcharge for Submission Method (“Surcharge”), which is a percent surcharge on post discount trade recording fees as recorded on a Clearing

Member’s monthly bill that is charged to Clearing Members that submit trade data either on a single batch or multi-batch method; (2) MBSD’s account maintenance fee (\$50 per month for each trade assignment account); and (3) fees for late payments of EPN bills.

As described further below, FICC has determined that the Surcharge and the fees for late payment of EPN bills are no longer necessary to encourage alternatives to batch processing or prompt payment of bills, respectively. As also described below, FICC is proposing to remove MBSD’s account maintenance fee for trade assignment accounts does not offer trade assignment accounts.

Each of these proposed changes is described below.

###### (i) Surcharge for Submission Method

FICC is proposing to remove the Surcharge from the Clearing Rules’ Schedule of Charges for the Broker Account Group (“Broker Schedule”) and the Schedule of Charges for the Dealer Account Group (“Dealer Schedule”).<sup>7</sup>

In 2006, FICC implemented the Surcharge to be imposed on Clearing Members that are either single batch submitters or multi-batch submitters of transaction data.<sup>8</sup> The surcharge is (1) fifty percent (with a minimum of \$500) on the post discount trade recording fees, as recorded on the monthly bill of single batch submitters, and (2) twenty percent (with a minimum of \$500) on the post discount trade recording fees, as recorded on the monthly bill of multi-batch submitters.<sup>9</sup> The Surcharge was introduced to encourage Clearing Members to submit trades using the interactive messaging submission method through FICC’s Real-Time Trade Matching (“RTTM”) Web service, encourage submission of transaction data on a timely basis, and cover the costs of batch processing.<sup>10</sup> The rationale for encouraging the use of interactive messaging through RTTM Web included mitigating (1) the risk associated with the longer time to complete trade comparison and confirmation in batch processing; and

<sup>7</sup> *Supra* note 5.

<sup>8</sup> See Securities Exchange Act Release No. 53061 (January 5, 2006), 71 FR 2078 (January 12, 2006) (SR–FICC–2005–20).

<sup>9</sup> See Broker Schedule and Dealer Schedule, *supra* note 5.

<sup>10</sup> Where Clearing Members previously submitted trades to FICC either once or multiple times during the day in batches (referred to as “batch submission”), interactive messaging through RTTM Web involves the submission of trades to FICC on a real-time basis and allows Clearing Members to, for example, receive trade status messages and cancel or modify trades.

<sup>8</sup> See *supra* note 3.

<sup>9</sup> The Commission notes that on November 30, 2018, the Exchange has filed a separate proposed rule change to extend the pilot period, which is currently set to expire on December 31, 2018, until June 30, 2019. See SR–NYSE–2018–59.

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> 17 CFR 200.30–3(a)(57).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b–4(f)(4).

<sup>5</sup> Available at <http://www.dtcc.com/legal/rules-and-procedures>. Capitalized terms used herein and not otherwise defined shall have the meaning assigned to such terms in the Rules.

<sup>6</sup> Earlier this year, FICC implemented changes to the fee structure of GSD in connection with this initiative. See Securities Exchange Act Release No. 83401 (June 8, 2018), 83 FR 27812 (June 14, 2018) (SR–FICC–2018–003). FICC’s affiliates, The Depository Trust Company and National Securities Clearing Corporation, are also proposing changes to their respective fees.

(2) the operational risk introduced when the parties to a trade submit trade data through different submission methods.<sup>11</sup>

Since the introduction of the Surcharge, the use of the interactive trade submission method through RTTM Web has expanded. As of May 2005, thirty-five percent of Clearing Members used interactive messaging through RTTM Web, representing approximately eighty percent of total par and seventy-four percent of total sides of transactions processed.<sup>12</sup> As of June 2018, all Clearing Members were using interactive messaging through RTTM Web for transaction data submission and, while some Clearing Members submit certain files by batch method from time to time, approximately ninety-seven percent of MBSD's total par and total sides of transactions processed were submitted using interactive messaging through RTTM Web. Given that all Clearing Members have now adopted the technology necessary to submit transaction data using the interactive messaging submission method through RTTM Web, FICC does not anticipate that Clearing Members will revert to using solely a batch submission method.

Therefore, FICC believes the Surcharge is no longer necessary and is proposing to remove it from the Clearing Rules. In order to implement this proposed change, FICC would remove the Surcharge from (1) MBSD Clearing Rules, Brokers Schedule, "I. Fees," and (2) MBSD Clearing Rules, Dealers Schedule, "I. Fees."

(ii) Account Maintenance Fee for Trade Assignment Accounts<sup>13</sup>

FICC is proposing to remove the account maintenance fee for "Trade Assignment Accounts" from the Dealer Schedule.

While the Dealer Schedule includes an account maintenance fee for trade assignment accounts, FICC does not offer trade assignment accounts, and has not been able to identify any records relating to the establishment, maintenance, or termination of this service. Therefore, the proposed change to remove the related account maintenance fee would merely update the Dealer Schedule to reflect current services available to Clearing Members.

In order to implement this proposed change, FICC would remove the "Trade

Assignment Account" fee from MBSD Clearing Rules, Dealer Schedule, "I. Fees, Account Maintenance."

(iii) Fees for Late Payment of EPN Bills<sup>14</sup>

FICC is proposing to remove the "Additional Fees for Late Payment of EPN Bills" from the EPN Schedule of Fees in the EPN Rules.

In 1998, FICC implemented a schedule of fees for late payment of financial obligations to FICC in order to motivate participants to pay their obligations to FICC before the applicable deadlines and compensate MBSD for the costs associated with monitoring such late payments.<sup>15</sup> When these fees were implemented, they were added to the Broker Schedule and Dealer Schedule in the Clearing Rules, and to the EPN Schedule of Charges in the EPN Rules. Within the EPN Rules, these fees range from \$50 to \$500, and are scaled based on whether the late payment is a first, second, third, or fourth occurrence.

In 2004, FICC revised the Broker Schedule and the Dealer Schedule of the Clearing Rules to characterize these fees as fines.<sup>16</sup> While late payment of financial obligations under the Clearing Rules could represent late payment of margin charges, which create risk to FICC, late payments of EPN bills do not present FICC with the same risk. Therefore, similar changes were not made to the EPN Rules in 2004 and these fees remained unchanged. In connection with its recent review of fees, FICC has determined that late payment of EPN bills are rarely applied.<sup>17</sup> In general, EPN users promptly pay their EPN bills. FICC has determined that it is no longer necessary to retain this fee because, as stated above, such late payments do not present FICC with the same risk as late payment of bills under the Clearing Rules. Therefore, FICC is proposing to remove this fee from the EPN Rules.

In order to implement this proposed change, FICC would remove the "ADDITIONAL FEES FOR LATE PAYMENT OF EPN BILLS" from the EPN Rules, EPN Schedule of Charges.

<sup>14</sup> Per email instruction from FICC's legal staff on December 7, 2018, Commission staff revised this subsection to correct a typographical error, changing the number of this subsection from "(ii)" to "(iii)."

<sup>15</sup> See Securities Exchange Act Release No. 39849 (April 10, 1998), 63 FR 19546 (April 20, 1998) (SR-MBSCC-97-09).

<sup>16</sup> See Securities Exchange Act Release No. 50965 (January 5, 2005), 70 FR 2201 (January 12, 2005) (SR-FICC-2004-06).

<sup>17</sup> FICC has not charged these fees to any EPN Users for at least four years as of the date of this filing.

## Member Outreach

Beginning in June 2018, FICC has conducted ongoing outreach to participants in order to provide them with notice of the proposed changes. As of the date of this filing, no written comments relating to the proposed changes have been received in response to this outreach. The Commission will be notified of any written comments received.

## Implementation Timeframe

FICC would implement this proposal on January 1, 2019. As proposed, a legend would be added to the Broker Schedule and the Dealer Schedule in the Clearing Rules and to the EPN Schedule of Charges in the EPN Rules, as appropriate, stating there are changes that became effective upon filing with the Commission but have not yet been implemented. The proposed legend also would include the date on which such changes would be implemented and the file number of this proposal, and would state that, once this proposal is implemented, the legend would automatically be removed from each of the Broker Schedule, the Dealer Schedule, and the EPN Schedule of Charges.

## 2. Statutory Basis

FICC believes the proposed changes are consistent with the Section 17A(b)(3)(D) of the Act, which requires, in part, that the Rules provide for the equitable allocation of reasonable dues, fees, and other charges among participants.<sup>18</sup> The proposed change to remove the Surcharge from the Broker Schedule and the Dealer Schedule would provide for the equitable allocation of fees among participants because the proposal would apply to all participants, such that no Clearing Members would be subject to this fee following the implementation of the proposed change. The proposed change to remove the fee for late EPN bills from the EPN Schedule of Fees would also provide for the equitable allocation of fees among participants because this proposal would apply to all participants, such that no EPN Users would be subject to this fee following the implementation of the proposed change. Further, FICC believes these two proposed changes are reasonable because they would eliminate two fees that are no longer necessary, for the reasons described above. Therefore, these proposed changes are consistent with Section 17A(b)(3)(D).<sup>19</sup>

<sup>18</sup> 15 U.S.C. 78q-1(b)(3)(D).

<sup>19</sup> *Id.*

<sup>11</sup> See *supra* note 8.

<sup>12</sup> *Id.* at FN 3.

<sup>13</sup> Per email instruction from FICC's legal staff on December 7, 2018, Commission staff revised this subsection to correct a typographical error, changing the number of this subsection from "(i)" to "(ii)."



The proposed change to remove the account maintenance fee for trade assignment accounts from the Dealer Schedule would provide for the equitable allocation of fees among participants because removing this fee, which does not relate to a service provided by FICC, would improve the accuracy of the Dealer Schedule for all Clearing Members. FICC believes this proposed change is reasonable because, following implementation of the proposed change, the Dealer Schedule would only include fees that relate to existing services provided by FICC. Therefore, this proposed change is also consistent with Section 17A(b)(3)(D).<sup>20</sup>

Rule 17Ad-22(e)(21) under the Act requires, in part, that FICC establish, implement, maintain and enforce written policies and procedures reasonably designed to be efficient and effective in meeting the requirements of its participants and the markets it serves.<sup>21</sup> The proposed change to eliminate the Surcharge would eliminate a fee that is no longer necessary to discourage batch submission of trades, for the reasons described above. The proposed change to eliminate the late payment for EPN bills would also eliminate a fee that is no longer necessary to discourage late payment of such bills, for the reasons described above. Finally, the proposed change to remove the account maintenance fee for trade assignment accounts from the Dealer Schedule would remove a fee from the Dealer Schedule that does not relate to a service offered by FICC. Each of these proposed changes would simplify and update the Rules, thereby improving the clarity of the Rules and enhancing their transparency to participants. By removing fees that are no longer necessary or do not relate to FICC's services, and improving the clarity of the Rules, the proposed changes would allow FICC to more efficiently and effectively meet the requirements of its participants. Therefore, FICC believes this proposed rule change is also consistent with Rule 17Ad-22(e)(21).<sup>22</sup>

*(B) Clearing Agency's Statement on Burden on Competition*

FICC does not believe that the proposed rule changes would have any impact, or impose any burden, on competition. The proposed changes would eliminate fees that are no longer necessary, for the reasons described above, and would remove a fee from the Clearing Rules that does not relate to a

service provided by FICC. Each of the proposed changes would apply equally to all participants such that no participants would be subject to the eliminated fees following the implementation of the proposed changes, and the Clearing Rules would no longer identify a fee that does not relate to an FICC service. Therefore, FICC does not believe these proposed changes would not have any impact on competition.

*(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

FICC has not solicited or received any written comments relating to this proposal. FICC will notify the Commission of any written comments that it receives.

**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<sup>23</sup> and paragraph (f) of Rule 19b-4 thereunder.<sup>24</sup> At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FICC-2018-012 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549. All submissions should refer to File Number SR-FICC-2018-012. This file number should be included on the subject line if email is used. To help the Commission process and review your

comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet 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 FICC and on DTCC's website (<http://dtcc.com/legal/sec-rule-filings.aspx>). 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-FICC-2018-012 and should be submitted on or before January 4, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>25</sup>

**Eduardo A. Aleman,**  
Deputy Secretary.

[FR Doc. 2018-27079 Filed 12-13-18; 8:45 am]

BILLING CODE 8011-01-P

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-84765; File No. SR-Phlx-2018-79]

**Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Update the Trading Floor Qualification Examination**

December 10, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 30, 2018, Nasdaq PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC") or

<sup>20</sup> *Id.*

<sup>21</sup> 17 CFR 240.17Ad-22(e)(21).

<sup>22</sup> *Id.*

<sup>23</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>24</sup> 17 CFR 240.19b-4(f).

<sup>25</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

“Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### **I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to revise its floor qualification examination. Specifically, the Exchange proposes to delete obsolete questions, change the format of certain questions from “true/false” to multiple choice, add several new questions, and revise certain questions, as described further below.

The text of the proposed rule change is available on the Exchange’s website at <http://nasdaqphlx.cchwallstreet.com/>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

### **II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

#### **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 improve the Exchange’s program for qualification of members by updating its floor qualification examination. The Exchange has employed a written floor qualification examination, which is required for persons seeking to act as members on the trading floor, for many years.<sup>3</sup> The examination was last amended in 2012.<sup>4</sup>

<sup>3</sup> See Rules 620(a) and 901(c). See also Rule 1061 applicable to Floor Brokers.

<sup>4</sup> Securities Exchange Act Release No. 67508 [sic] (July 26 [sic], 2012), 77 FR 46141 (July 27, 2012 [sic]) (SR-Phlx-2012-96). See also Securities Exchange Act Release No. 63603 (December 22, 2010), 75 FR 82419 (December 30, 2010) (SR-Phlx-2010-180); Securities Exchange Act Release No. 33304 (December 9, 1993), 58 FR 65613 (December 15, 1993) (SR-Phlx-92-34).

At this time, the Exchange proposes to update the examination in a variety of ways. The examination would continue to be comprised of 100 questions. Those questions would be randomly and electronically selected from a question bank of 188 questions, an increase of 16 questions from the existing question bank. The floor qualification examination would continue to be administered by the Exchange’s membership department, and continue to require a passing score of 70 during a 75 minute testing period.

The Exchange proposes to delete 11 obsolete questions. Nine of the questions deleted test knowledge that is no longer applicable because of revisions to the PHLX rules. The other two questions deleted test knowledge no longer needed to trade on the Phlx floor. The Exchange also proposes to modify 55 questions by changing the format of those questions from “true/false” to multiple choice. The subject matter covered by each of those questions will not change. The Exchange further proposes to add 27 new questions. Twenty of the new questions generally test knowledge of the new Floor Broker Management System (“FBMS”). The remaining seven questions were added to expand the bank from which questions are selected. Finally, the Exchange notes that certain questions were revised to correct grammatical errors and standardize the answer format. With these changes, the total number of questions available for random and electronic selection will increase from 172 to 188.

##### **2. Statutory Basis**

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>5</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>6</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. In addition, the Exchange believes that the proposed rule change is consistent with Section 6(c)(3)(B) of the Act,<sup>7</sup> which authorizes exchanges to prescribe standards of training, experience and competence for persons associated with exchange members, and gives exchanges the authority to bar a natural person from becoming a member or a person associated with a member, if the person does not meet the standards of training,

<sup>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 15 U.S.C. 78f(c)(3)(B).

experience and competence prescribed in the rules of the exchange. The Exchange believes that revising its floor member qualification examination as proposed in this filing, including by deleting obsolete questions, changing the format of 55 questions from “true/false” to multiple choice, and adding questions, including those that relate to the new FMBS [sic], will better test the knowledge of prospective floor members, and thereby enhance the Exchange’s standards for training, experience and competence. In addition, the exchange is modifying the format of its “true/false” questions to multiple choice and making certain other changes, such as correcting grammatical errors and standardizing the answer format.

#### **B. Self-Regulatory Organization’s Statement on Burden on Competition**

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

#### **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**

Pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(1)<sup>9</sup> thereunder, the Exchange has designated this proposal as one that constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the SRO, and therefore has become effective.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing,

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(1).

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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2018-79 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2018-79. 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-Phlx-2018-79 and should be submitted on or before January 4, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Eduardo A. Aleman,**  
Deputy Secretary.

[FR Doc. 2018-27075 Filed 12-13-18; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84773; File No. SR-NYSEARCA-2018-89]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Period for the Exchange's Retail Liquidity Program Until June 30, 2019

December 10, 2018.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 ("Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on November 30, 2018, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, 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 extend the pilot period for the Exchange's Retail Liquidity Program (the "Retail Liquidity Program" or the "Program"), which is currently scheduled to expire on December 31, 2018, until June 30, 2019. The proposed rule change is available on the Exchange's website at [www.nyse.com](http://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 extend the pilot period for the Retail Liquidity Program, currently scheduled to expire on December 31, 2018,<sup>4</sup> until June 30, 2019.

##### Background

In July 2012, the Commission approved the Retail Liquidity Program on a pilot basis.<sup>5</sup> The Program is designed to attract retail order flow to the Exchange, and allows such order flow to receive potential price improvement. The Program is currently limited to trades occurring at prices equal to or greater than \$1.00 per share. Under the Program, Retail Liquidity Providers ("RLPs") are able to provide potential price improvement in the form of a non-displayed order that is priced better than the Exchange's best protected bid or offer ("PBBO"), called a Retail Price Improvement Order ("RPI"). When there is an RPI in a particular security, the Exchange disseminates an indicator, known as the Retail Liquidity Identifier, indicating that such interest exists. Retail Member Organizations ("RMOs") can submit a Retail Order to the Exchange, which would interact, to the extent possible, with available contra-side RPIs.

The Retail Liquidity Program was approved by the Commission on a pilot basis. Pursuant to NYSE Arca Rule 7.44-E(m), the pilot period for the Program is scheduled to end on December 31, 2018.

##### Proposal To Extend the Operation of the Program

The Exchange established the Retail Liquidity Program in an attempt to attract retail order flow to the Exchange by potentially providing price improvement to such order flow. The Exchange believes that the Program promotes competition for retail order flow by allowing Exchange members to submit RPIs to interact with Retail Orders. Such competition has the ability to promote efficiency by facilitating the price discovery process and generating additional investor interest in trading securities, thereby promoting capital formation. The Exchange believes that

<sup>4</sup> See Securities Exchange Act Release No. 83538 (June 28, 2018), 83 FR 31210 (July 3, 2018) (SR-NYSEARCA-2018-46).

<sup>5</sup> See Securities Exchange Act Release No. 71176 (December 23, 2013), 78 FR 79524 (December 30, 2013) (SR-NYSEARCA-2013-107) ("RPL Approval Order").

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>10</sup> 17 CFR 200.30-3(a)(12).

extending the pilot is appropriate because it will allow the Exchange and the Commission additional time to analyze data regarding the Program that the Exchange has committed to provide.<sup>6</sup> As such, the Exchange believes that it is appropriate to extend the current operation of the Program.<sup>7</sup> Through this filing, the Exchange seeks to amend NYSE Arca Rule 7.44–E(m) and extend the current pilot period of the Program until June 30, 2019.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>9</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that extending the pilot period for the Retail Liquidity Program is consistent with these principles because the Program is reasonably designed to attract retail order flow to the exchange environment, while helping to ensure that retail investors benefit from the better price that liquidity providers are willing to give their orders. Additionally, as previously stated, the competition promoted by the Program may facilitate the price discovery process and potentially generate additional investor interest in trading securities. The extension of the pilot period will allow the Commission and the Exchange to continue to monitor the Program for its potential effects on public price discovery, and on the broader market structure.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change simply extends an established pilot program for an

additional six months, thus allowing the Retail Liquidity Program to enhance competition for retail order flow and contribute to the public price discovery process.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>10</sup> and Rule 19b–4(f)(6) thereunder.<sup>11</sup> Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)<sup>12</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),<sup>13</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

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)<sup>14</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR–NYSEArca–2018–89 on the subject line.

### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2018–89. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2018–89 and should be submitted on or before January 4, 2019.

<sup>6</sup> See *id.*, 78 FR at 79529.

<sup>7</sup> Concurrently with this filing, the Exchange has submitted a request for an extension of the exemption under Regulation NMS Rule 612 previously granted by the Commission that permits it to accept and rank the undisplayed RPIs. See Letter from Martha Redding, Associate General Counsel and Asst. Corporate Secretary, NYSE Group, Inc. to Brent J. Fields, Secretary, Securities and Exchange Commission, dated November 30, 2018.

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>11</sup> 17 CFR 240.19b–4(f)(6).

<sup>12</sup> 17 CFR 240.19b–4(f)(6).

<sup>13</sup> 17 CFR 240.19b–4(f)(6)(iii).

<sup>14</sup> 15 U.S.C. 78s(b)(2)(B).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Eduardo A. Aleman,**

*Deputy Secretary.*

[FR Doc. 2018-27083 Filed 12-13-18; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

**SEC File No. 270-149, OMB Control No. 3235-0130]**

### Proposed Collection; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736.

#### Extension:

Rule 17Ad-2(c), (d), and (h)

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 ("PRA") (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the existing collection of information provided for in Rule 17Ad-2(c), (d), and (h), (17 CFR 240.17Ad-2(c), (d), and (h)), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget ("OMB") for extension and approval.

Rule 17Ad-2(e), (d), and (h) enumerates the requirements with which transfer agents must comply to inform the Commission or the appropriate regulator of a transfer agent's failure to meet the minimum performance standards set by the Commission rule by filing a notice.

The Commission receives approximately 3 notices a year pursuant to Rule 17Ad-2(c), (d), and (h). The estimated annual time burden of these filings on respondents is minimal in view of: (a) The readily available nature of most of the information required to be included in the notice (since that information must be compiled and retained pursuant to other Commission rules); and (b) the summary fashion in which such information must be presented in the notice (most notices are one page or less in length). In light of the above, and based on the experience of the staff regarding the notices, the Commission staff estimates that, on average, most notices require approximately one-half hour to prepare. Thus, the Commission staff estimates

that the industry-wide total time burden is approximately 1.5 hours.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE Washington, DC 20549, or send an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Dated: December 10, 2018.

**Eduardo A. Aleman,**

*Deputy Secretary.*

[FR Doc. 2018-27092 Filed 12-13-18; 8:45 am]

BILLING CODE 8011-01-P

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #15827 and #15828; Guam Disaster Number GU-00005]**

### Administrative Declaration of a Disaster for the Territory of Guam

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a notice of an Administrative declaration of a disaster for the Territory of Guam dated. 12/07/2018.

*Incident:* Typhoon Mangkhut.

*Incident Period:* 09/10/2018 through 09/11/2018.

**DATES:** Issued on 12/07/2018.

*Physical Loan Application Deadline Date:* 02/05/2019.

*Economic Injury (EIDL) Loan Application Deadline Date:* 09/09/2019.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and

Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Area:* Guam.

*Contiguous Areas:*

None.

The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
Homeowners with Credit Available Elsewhere .....	4.000
Homeowners without Credit Available Elsewhere .....	2.000
Businesses with Credit Available Elsewhere .....	7.350
Businesses without Credit Available Elsewhere .....	3.675
Non-Profit Organizations with Credit Available Elsewhere ...	2.500
Non-Profit Organizations without Credit Available Elsewhere .....	2.500
<i>For Economic Injury:</i>	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere .....	3.675
Non-Profit Organizations without Credit Available Elsewhere .....	2.500

The number assigned to this disaster for physical damage is 15827 8 and for economic injury is 15828 0.

The Territory which received an EIDL Declaration # is Guam.

(Catalog of Federal Domestic Assistance Number 59008)

Dated: December 7, 2018.

**Linda E. McMahon,**

*Administrator.*

[FR Doc. 2018-27118 Filed 12-13-18; 8:45 am]

BILLING CODE 8025-01-P

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #15829 and #15830; Maryland Disaster Number MD-00040]**

### Administrative Declaration of a Disaster for the State of Maryland

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

<sup>15</sup> 17 CFR 200.30-3(a)(12).

**SUMMARY:** This is a notice of an Administrative declaration of a disaster for the State of Maryland.

*Dated:* 12/07/2018.

*Incident:* Tornadoes.

*Incident Period:* 11/02/2018.

**DATES:** Issued on 12/07/2018.

*Physical Loan Application Deadline Date:* 02/05/2019.

*Economic Injury (EIDL) Loan Application Deadline Date:* 09/09/2019.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Carroll.

*Contiguous Counties:*

*Maryland:* Baltimore, Frederick, Howard.

*Pennsylvania:* Adams, York.

The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
Homeowners with Credit Available Elsewhere .....	4.000
Homeowners without Credit Available Elsewhere .....	2.000
Businesses with Credit Available Elsewhere .....	7.480
Businesses without Credit Available Elsewhere .....	3.740
Non-Profit Organizations with Credit Available Elsewhere ...	2.750
Non-Profit Organizations without Credit Available Elsewhere .....	2.750
<i>For Economic Injury:</i>	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere .....	3.740
Non-Profit Organizations without Credit Available Elsewhere .....	2.750

The number assigned to this disaster for physical damage is 15829 C and for economic injury is 15830 0.

The States which received an EIDL Declaration # are Maryland, Pennsylvania.

(Catalog of Federal Domestic Assistance Number 59008)

Dated: December 7, 2018.

**Linda E. McMahon,**  
*Administrator.*

[FR Doc. 2018-27117 Filed 12-13-18; 8:45 am]

**BILLING CODE 8025-01-P**

## **SOCIAL SECURITY ADMINISTRATION**

[Docket No. SSA-2018-0048]

### **Review and Reassessment of the Social Security Administration's (SSA) Representative Payee Selection and Replacement Policies**

**AGENCY:** Social Security Administration.

**ACTION:** Notice; request for comments.

**SUMMARY:** We are requesting information on the appropriateness of our order of preference lists for selecting representative payees (payees) and the effectiveness of our policy and operational procedures in determining when to change a payee. We are seeking this information to determine whether and how we should make any changes to our representative payee program to help ensure that we select suitable payees for our beneficiaries.

**DATES:** To ensure that your comments are considered, we must receive them no later than January 28, 2019.

**ADDRESSES:** You may submit comments by any one of three methods—internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA-2018-0048 so that we may associate your comments with the correct document.

**Caution:** You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend that you submit your comments via the internet. Please visit the Federal eRulemaking portal at <http://www.regulations.gov>. Use the *Search* function to find docket number SSA-2018-0048. The system will issue you a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to a week for your comment to be viewable.

2. *Fax:* Fax comments to (410) 966-2830.

3. *Mail:* Address your comments to the Office of Regulations and Reports

Clearance, Social Security Administration, 3100 West High Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235-6401.

Comments are available for public viewing on the Federal eRulemaking portal at <http://www.regulations.gov> or in person, during regular business hours, by arranging with the contact person identified below.

#### **FOR FURTHER INFORMATION CONTACT:**

Erinn Demers, Office of Income Security Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, (877) 405-3671 x23810. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778, or visit our internet site, Social Security Online, at <http://www.socialsecurity.gov>.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On April 13, 2018, Congress passed the Strengthening Protections for Social Security Beneficiaries Act of 2018, Public Law 115-165. Section 204 of that law requires the Commissioner to conduct a review and reassessment, with opportunity for public comment, of the appropriateness of the order of preference for selecting representative payees (payees) and the effectiveness of our policy and operations for changing payees. We will submit a report on the results of the review and reassessment to Congress within 18 months of enactment.

A person who receives benefits from us may be unable to manage those benefits for reasons such as his or her young age or mental or physical impairment. In these cases, we select a payee if we believe that representative payment, rather than direct payment of benefits, will better serve the beneficiary's interest. Generally, we select a payee if we determine that the beneficiary is not able to manage or direct the management of benefit payments in his or her interest. The payee may be an organization or a person, such as a parent, relative, or friend of the beneficiary.

We review and evaluate each representative payee application individually to determine the best representative payee. We carefully screen and consider all applicants, before we make a selection, to ensure the beneficiary's best interest is served. In determining the best payee choice, we consider all factors, including the applicant's relationship to the beneficiary, the applicant's concern for the beneficiary's well-being, whether

there is a financial relationship (creditor) between the applicant and the beneficiary, and whether or not the applicant has custody of the beneficiary.

Sections 205(j) and 1631(a)(2) of the Social Security Act (Act), our regulations at 20 CFR 404.2021 and 20 CFR 416.621, and our Program Operations Manual System (POMS) instructions at GN 00502.105<sup>1</sup> provide guidelines for payee preference that we use as a developmental guide in selecting a representative payee. The payee preference lists do not negate our responsibility to investigate whether we should select a payee applicant to serve a beneficiary. Our primary concern is to select the payee who will best serve the beneficiary's interest. Generally, the applicants on the payee preference lists are the preferred candidates shown in the preferred order of selection. For example, for beneficiaries 18 years or older (except those who are disabled and also have a drug addiction or alcoholism condition) the regulations indicate that a legal guardian, spouse, or other relative who has custody of the beneficiary or who demonstrates strong concern for the beneficiary generally has a higher preference than an organization. For disabled beneficiaries 18 years or older with a drug addiction or alcoholism condition, the regulations reflect the statutory preference for certain agencies and organizations over a family member. For beneficiaries under age 18, the regulations indicate that a natural or adoptive parent with custody of the beneficiary, or a guardian generally has a higher preference than a relative who does not have custody.

We are seeking comment about whether our existing order of payee preference is appropriate, particularly with respect to the selection of public or non-profit agencies or institutions and for-profit institutions or creditors of the beneficiary as representative payees. Our POMS at GN 00501.013<sup>2</sup> define different organizations as follows. State and local institutions are institutions funded and operated by a State or local government. Typical examples are State psychiatric institutions, county developmental centers for individuals with intellectual disabilities and State hospitals. A private or for-profit is an institution operated by an individual or corporation to make a profit. Privately owned nursing homes, board and care homes, and extended care facilities are examples of these institutions. A non-profit institution is a not-for-profit, non-

governmental institution, such as a home operated by a religious organization or charity. A financial organization is an organization with the primary purpose of handling money, such as a bank, credit union, or savings and loan association. A "social agency" is a non-custodial entity that provides social service assistance to the community, such as State or county Department of Social Services, Child Protective Services, Catholic Charities, Lutheran Social Services, and United Way agencies. An official is an agent of a State or other governmental entity who performs duties as a job function rather than as an individual in the community. Officials are typically public guardians and officers of the court. Our POMS at GN 00502.135<sup>3</sup> defines a creditor as an individual or organization who provides the beneficiary with goods or services for monetary consideration. Under the Act, we will generally not appoint a creditor of a beneficiary to serve as the beneficiary's representative payee. However, there are exceptions, such as when the creditor is a relative living in the same household, a legal guardian, or a facility that is licensed or certified as a care facility under the laws of a State or political subdivision.<sup>4</sup> The order of preference list does not incorporate creditor status.

We are also seeking comment about whether our policies and controls are sufficient to prevent an inappropriate change of payee. Under existing policies and procedures, if we need to change a payee, we identify a new payee using the order of preference list and our other policies in our POMS at GN 00502.100 through GN 00502.181.<sup>5</sup> We are also attentive to any indication that an adult beneficiary no longer needs a representative payee. If we are considering making the payee change, we generally contact the current payee for his or her input, unless it would be inappropriate to do so. During our contact with the current payee, we discuss issues such as:

- The payee's knowledge of the beneficiary's whereabouts and living arrangements;
- His/her reasons for wanting or not wanting to continue as payee; and
- Any information pertinent to the beneficiary's capability.

<sup>3</sup> Available at: <https://secure.ssa.gov/apps10/poms.nsf/lnx/0200502135>.

<sup>4</sup> Sections 205(j)(2)(C)(i)(III) and (iii) and 1631(a)(2)(B)(iii)(III) and (v) of the Act, 42 U.S.C. 405(j)(2)(C)(i)(III) and (iii), and 1383(a)(2)(B)(iii)(III) and (v).

<sup>5</sup> Available at: <https://secure.ssa.gov/apps10/poms.nsf/subchapterlist!openview&restrictto category=02005>.

We evaluate the results obtained from the contact with the current payee and exercise judgment when determining if we should appoint another payee.

#### *Request for Comments*

We ask for your comments about the appropriateness of our order of preference lists for selecting payees and the effectiveness of our policy and operational procedures in determining when to change a representative payee. We ask that, in preparing comments, you address questions such as:

(1) Is the current order of preference list appropriate when selecting or changing a representative payee?

(2) If you believe that the order of preference list is not appropriate, what would you change about the order of preference list?

(3) Should we change how we consider public and non-profit agencies or institutions and private, for-profit institutions in our order of preference list?

(4) Since there are statutory provisions that generally prevent a creditor from serving as a representative payee, should we consider creditor status in our order of preference list? If so, how should we consider creditor status in light of the statute?

(5) Are our policy and operational procedures effective in properly determining whether to change a representative payee?

(6) Do we effectively determine when to change from a payee that has a higher order of preference (such as a family member) to a payee that has a lower order of preference (such as a creditor)?

(7) When a request to change a payee arises from someone other than the beneficiary, do we effectively determine the need to change the payee?

(8) What would you change about our policies and procedures to help us determine when to change a payee?

(9) Is there any evidence of difficulty in finding suitable payees, over time and in various circumstances? If so, how should this evidence influence our order of preference list and our policies for changing payees?

Please see the information under **ADDRESSES** earlier in this document for methods to give us your comments. We will not respond to your comments, but we will consider them as we review our policies and instructions to determine if we should revise or update them.

**Nancy A. Berryhill,**

*Acting Commissioner of Social Security.*

[FR Doc. 2018-27051 Filed 12-13-18; 8:45 am]

**BILLING CODE 4191-02-P**

<sup>1</sup> Available at: <https://secure.ssa.gov/apps10/poms.nsf/lnx/0200502105>.

<sup>2</sup> Available at: <https://secure.ssa.gov/apps10/poms.nsf/lnx/0200501013>.



**DEPARTMENT OF STATE****[Public Notice 10623]****60-Day Notice of Proposed Information Collection: Application Under the Hague Convention on the Civil Aspects of International Child Abduction****ACTION:** Notice of request for public comment.

**SUMMARY:** The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

**DATES:** The Department will accept comments from the public up to February 12, 2019.

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

- *Web:* Persons with access to the internet may comment on this notice by going to [www.Regulations.gov](http://www.Regulations.gov). You can search for the document by entering "Docket Number: DOS 2018-0057" in the Search field. Then click the "Comment Now" button and complete the comment form.

- *Email:* [RiversDA@state.gov](mailto:RiversDA@state.gov).

- *Regular Mail:* Send written comments to: U.S. Department of State, CA/OCS/PMO, SA-17, 10th Floor, Washington, DC 20522-1710.

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

**FOR FURTHER INFORMATION CONTACT:**

Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Derek Rivers at SA-17, 10th Floor, Washington, DC 20522-1710, who may be reached on 202-485-6332 or at [RiversDA@state.gov](mailto:RiversDA@state.gov).

**SUPPLEMENTARY INFORMATION:**

- *Title of Information Collection:* Application Under the Hague Convention on the Civil Aspects of International Child Abduction.

- *OMB Control Number:* 1405-0076.

- *Type of Request:* Revision of a Currently Approved Collection.

- *Originating Office:* Bureau of Consular Affairs, Overseas Citizens Services (CA/OCS).

- *Form Number:* DS-3013, 3013s.

- *Respondents:* Person seeking return of or access to child.

- *Estimated Number of Respondents:* 565.

- *Estimated Number of Responses:* 565.

- *Average Time per Response:* 60 minutes.

- *Total Estimated Burden Time:* 565 hours.

- *Frequency:* On occasion.

- *Obligation to Respond:* Voluntary.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.

- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.

- Enhance the quality, utility, and clarity of the information to be collected.

- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

**Abstract of Proposed Collection**

The Application Under the Hague Convention on the Civil Aspects of International Child Abduction (DS-3013 and DS 3013-s) is used by parents or legal guardians who are requesting the State Department's assistance in seeking the return of, or access to, a child or children alleged to have been wrongfully removed from or retained outside of the child's habitual residence and currently located in another country that is also party to the Hague Convention on the Civil Aspects of International Child Abduction (the Convention). The application requests information regarding the identities of the applicant, the child or children, and the person alleged to have wrongfully removed or retained the child or children. In addition, the application requires that the applicant provide the circumstances of the alleged wrongful removal or retention and the legal justification for the request for return or access. The State Department, as the U.S. Central Authority for the Convention, uses this information to establish, if possible, the applicants' claims under the Convention; to inform applicants about available remedies

under the Convention; and to provide the information necessary to the foreign Central Authority in its efforts to locate the child or children, and to facilitate return of or access to the child or children pursuant to the Convention. 22 U.S.C. 9008 is the legal authority that permits the Department to gather this information.

**Methodology**

The completed form DS-3013 and DS 3013-s may be submitted to the Office of Children's Issues by mail, by fax, or electronically accessed through [www.travel.state.gov](http://www.travel.state.gov).

**Michelle Bernier-Toth,**

*Managing Director, Bureau of Consular Affairs, Department of State.*

[FR Doc. 2018-27103 Filed 12-13-18; 8:45 am]

**BILLING CODE 4710-06-P**

**DEPARTMENT OF STATE****[Public Notice 10618]****60-Day Notice of Proposed Information Collection: Application for Consular Report of Birth Abroad of a Citizen of the United States of America****ACTION:** Notice of request for public comment.

**SUMMARY:** The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

**DATES:** The Department will accept comments from the public up to February 12, 2019.

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

- *Web:* Persons with access to the internet may comment on this notice by going to [www.Regulations.gov](http://www.Regulations.gov). You can search for the document by entering "Docket Number: DOS 2018-0056" in the Search field. Then click the "Comment Now" button and complete the comment form.

- *Email:* [RiversDA@state.gov](mailto:RiversDA@state.gov).

- *Regular Mail:* Send written comments to: U.S. Department of State, CA/OCS/PMO, SA-17, 10th Floor, Washington, DC 20522-1710.

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

**FOR FURTHER INFORMATION CONTACT:**

Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Derek Rivers at SA-17, 10th Floor, Washington, DC 20522-1710, who may be reached on 202-485-6332 or at [RiversDA@state.gov](mailto:RiversDA@state.gov).

**SUPPLEMENTARY INFORMATION:**

• *Title of Information Collection:* Application for Consular Report of Birth Abroad of a Citizen of the United States of America.

• *OMB Control Number:* 1405-0011.  
• *Type of Request:* Extension.  
• *Originating Office:* Bureau of Consular Affairs, Overseas Citizens Services (CA/OCS).

• *Form Number:* DS-2029.  
• *Respondents:* United States Citizens and Nationals.

• *Estimated Number of Respondents:* 73,647.

• *Estimated Number of Responses:* 73,647.

• *Average Time per Response:* 20 minutes.

• *Total Estimated Burden Time:* 24,549 hours.

• *Frequency:* On occasion.  
• *Obligation to Respond:* Voluntary.

We are soliciting public comments to permit the Department to:

• Evaluate whether the proposed information collection is necessary for the proper functions of the Department.

• Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

**Abstract of Proposed Collection**

The DS-2029, Application for Consular Report of Birth Abroad of a Citizen of the United States of America, is used by citizens of the United States to report the birth of a child while overseas. The information collected on this form will be used to certify the acquisition of U.S. citizenship at birth of a person born abroad. 22 CFR 50.5-50.7

are important legal authorities that permit the Department to use this form.

**Methodology**

An application for a Consular Report of Birth is normally made in the consular district in which the birth occurred. The parent respondents will complete the form and present it to a United States Consulate or Embassy, who will examine the documentation and enter the information provided into the Department of State American Citizen Services (ACS) electronic database.

**Michelle Bernier-Toth,**

*Managing Director, Bureau of Consular Affairs, Department of State.*

[FR Doc. 2018-27100 Filed 12-13-18; 8:45 am]

**BILLING CODE 4710-06-P**

**SURFACE TRANSPORTATION BOARD**

[Docket No. FD 36253]

**Middletown & New Jersey Railroad, LLC—Lease Exemption Containing Interchange Commitment—Norfolk Southern Railway Company**

Middletown & New Jersey Railroad, LLC (M&NJ), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease from Norfolk Southern Railway Company (NS) and to operate approximately 1.9 miles of rail line located between Four Story Junction at milepost UJ 0 and Middletown, NY, at milepost UJ 1.9, known as the Crawford Industrial Track (the Line).

According to M&NJ, in conjunction with the lease of the Line, it will also obtain incidental local and overhead trackage rights over rail line located between the western end of Campbell Hall yard at milepost JS 67.50, continuing for 9.1 miles to milepost JS 76.60 at CP Howells, and from milepost SR 68.90 at CP Howells, continuing for 21 miles to milepost SR 89.90 at or near Port Jervis, NY (the Incidental Trackage Rights). M&NJ states that the Incidental Trackage Rights are being granted over a line owned by NS and currently leased to Metro-North Commuter Railroad Company pursuant to a sublease agreement under which NS retained the exclusive, irrevocable, and perpetual right to provide or permit rail freight service on the line. *See Metro-North Commuter R.R.—Acquis. & Operation Exemption—Line of Norfolk S. Ry.*, FD 34293, slip op. at 2 (STB served May 13, 2003).

M&NJ certifies that its projected revenues as a result of this transaction will not result in M&NJ's becoming a

Class I or Class II rail carrier and will not exceed \$5 million. As required under 49 CFR 1150.43(h)(1), M&NJ has disclosed in its verified notice that the lease agreement contains an interchange commitment that will require M&NJ to pay additional charges if it interchanges certain traffic with a rail carrier other than NS.<sup>1</sup> M&NJ has provided additional information regarding the interchange commitment as required by 49 CFR 1150.43(h).

M&NJ states that it expects to consummate the transaction on or shortly after the effective date of this notice of exemption. The earliest this transaction may be consummated is December 29, 2018 (30 days after the verified notice was filed).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than December 21, 2018 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 36253, must be filed with the Surface Transportation Board, 395 E Street SW, Washington, DC 20423-0001. In addition, a copy of each pleading must be served on M&NJ's representative, Karl Morell, Karl Morell and Associates, Suite 440, 440 1st Street NW, Washington, DC 20001.

According to M&NJ, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic reporting under 49 CFR 1105.8(b).

Board decisions and notices are available on our website at [www.stb.gov](http://www.stb.gov).

Decided: December 11, 2018.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

**Tammy Lowery,**  
*Clearance Clerk.*

[FR Doc. 2018-27158 Filed 12-13-18; 8:45 am]

**BILLING CODE 4915-01-P**

**SURFACE TRANSPORTATION BOARD**

[Docket No. FD 36257]

**Alcoa Energy Services, Inc.—Acquisition Exemption—Rockdale, Sandow & Southern Railroad Company**

Alcoa Energy Services, Inc. (AESI), a noncarrier, has filed a verified notice of

<sup>1</sup> A draft copy of the lease agreement was submitted under seal with the verified notice.

exemption under 49 CFR 1150.31 to acquire from Rockdale, Sandow & Southern Railroad Company (RSSR) a railroad line extending from milepost 0.0 at a point of connection with Union Pacific Railroad Company (UP) at Marjorie, Tex., to milepost 6.0 at Sandow, Tex., a total of approximately 6 miles, along with appurtenant land and ancillary trackage (the Line).

AESI states that, as a result of this transaction, it will assume the associated common carrier obligations under federal law, including the obligation to provide rail service. However, AESI states that the Line is currently inactive and it is uncertain at what future point demand for rail service over the Line could again materialize to warrant restored rail operations.

AESI certifies that, as a consequence of the proposed transaction, its projected annual revenues will not result in its becoming a Class II or a Class I rail carrier and its projected annual revenues will not exceed \$5 million. AESI also certifies that the proposed transaction does not involve any interchange commitments as defined in 49 CFR 1150.33(h).

The earliest this transaction may be consummated is December 28, 2018, the effective date of the exemption (30 days after the verified notice was filed). AESI states that it intends to consummate the transaction on, or very shortly after, the effective date.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed by December 21, 2018 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 36257, must be filed with the Surface Transportation Board, 395 E Street SW, Washington, DC 20423-0001. In addition, a copy of each pleading must be served on AESI's counsel, Robert A. Wimbish, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606.

According to AESI, no environmental or historic documentation or report is required pursuant to 49 CFR 1105.6(c) and 1105.8(b).

Board decisions and notices are available on our website at [www.stb.gov](http://www.stb.gov).

Decided: December 10, 2018.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

**Kenyatta Clay,**  
Clearance Clerk.

[FR Doc. 2018-27099 Filed 12-13-18; 8:45 am]

**BILLING CODE 4915-01-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Recording of Aircraft Conveyances and Security Documents

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

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on October 9, 2018. The collection involves return to the Civil Aviation Aircraft Registry of information relating to the release of a lien that has been recorded with the Registry. Regulations provide for establishing and maintaining a system for the recording of security conveyances affecting title to, or interest in U.S. civil aircraft, as well as certain specifically identified engines, propellers, or spare parts locations, and for recording of releases relating to those conveyances. Federal Aviation Regulations establish procedures for implementation. Regulations describe what information must be contained in a security conveyance in order for it to be recorded with FAA. The convention on the International Recognition signatory, prevents, by treaty, the export of an aircraft and cancellation of its nationality marks if there is an outstanding lien recorded. The Civil Aviation Registry must have consent or release of lien from the lienholder prior to confirmation/cancellation for export.

**DATES:** Written comments should be submitted by January 14, 2019.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer,

Department of Transportation/FAA, and sent via electronic mail to [oira\\_submission@omb.eop.gov](mailto:oira_submission@omb.eop.gov), or faxed to (202) 395-6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

**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 FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA 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. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

#### FOR FURTHER INFORMATION CONTACT:

Barbara Hall at (940) 594-5913, or by email at: [Barbara.L.Hall@faa.gov](mailto:Barbara.L.Hall@faa.gov).

#### SUPPLEMENTARY INFORMATION:

**OMB Control Number:** 2120-0043.

**Title:** Recording of Aircraft Conveyances and Security Documents.

**Form Numbers:** None.

**Type of Review:** Renewal of an information collection.

#### Background: The **Federal Register**

Notice with a 60-day comment period soliciting comments on the following collection of information was published on October 9, 2018 (83 FR 50740). Since the single form (AC Form 8050-41, Notice of Recordation) of the collection is sent to the lienholder when the Registry records the lien on aircraft, propeller(s), engine(s) and/or spare parts location(s) as a part of another collection this form is now removed. When the lien is satisfied, the lienholder completes part II of the form AC Form 8050-41 and returns it to the Registry as official notification of the release of the lien. The lienholder may send the same information in any format without the form if desired. The collection involves return to the Civil Aviation Aircraft Registry of information relating to the release of a lien that has been recorded with the Registry. Title 49, U.S.C. Section 44108 provides for establishing and maintaining a system for the recording of security conveyances affecting title to, or interest in U.S. civil aircraft, as well as certain specifically identified engines, propellers, or spare parts locations, and for recording of releases relating to those conveyances. Federal Aviation Regulations part 49 (14 CFR 49) establishes procedures for implementation of 49 U.S.C. 44108. Part

49 describes what information must be contained in a security conveyance in order for it to be recorded with FAA.

**Respondents:** Any aircraft, propeller or engine lienholder, who has received the Notice of Recordation from the Registry, who is releasing the subject lien.

**Frequency:** On occasion.

**Estimated Average Burden per Response:** 1 hour.

**Estimated Total Annual Burden:** For FY 2017, records indicate a return of 23,681 release notifications for a total time burden of approximately 23,681 hours.

Issued in Washington, DC, on December 10, 2018.

**Barbara Hall,**

*FAA Information Collection Clearance Officer, Performance, Policy, and Records Management Branch, ASP-110.*

[FR Doc. 2018-27054 Filed 12-13-18; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

#### Hazardous Materials: Notice of Applications for Special Permits

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** Notice of actions on special permit applications.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein.

**DATES:** Comments must be received on or before January 14, 2019.

**ADDRESSES:** Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in

triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

#### FOR FURTHER INFORMATION CONTACT:

Ryan Paquet, Director, Office of Hazardous Materials Approvals and Permits Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH-30, 1200 New Jersey Avenue Southeast, Washington, DC 20590-0001, (202) 366-4535.

**SUPPLEMENTARY INFORMATION:** Copies of the applications are available for inspection in the Records Center, East Building, PHH-30, 1200 New Jersey Avenue Southeast, Washington, DC or at <http://regulations.gov>.

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on December 7, 2018.

**Donald P. Burger,**

*Chief, General Approvals and Permits Branch.*

### SPECIAL PERMITS DATA—GRANTED

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
6769-M .....	The Chemours Company FC LLC.	173.314, 173.315 .....	To modify the special permit to authorize additional tank cars as approved packaging.
10867-M .....	Meggitt Safety Systems, Inc ..	173.302(a) .....	To modify the special permit to update current revision letters of cylinder drawings.
11502-M .....	Federal Express Corporation	171.23, 172.203(a), 172.301(c).	To modify the special permit to authorize the FedEx Express air manifest to be considered shipping papers when shipping papers are used as a manifest over certain high-way routes.
11670-M .....	Schlumberger Technology Corp.	173.301(f), 173.302a, 173.201(c), 173.202(c), 173.203(c).	To modify the special permit to authorize manufacture, mark and sell of the approved packaging.
11970-M .....	Univation Technologies, LLC	173.242, 180.605(h) .....	To modify the special permit to authorize the pressure test being done pneumatically using nitrogen.
12629-M .....	TEA Technologies Inc .....	173.302a(b)(2), 173.302a(b)(3), 173.302a(b)(4), 173.302a(b)(5), 180.205(c), 180.205(f), 180.205(g), 180.205(i).	To modify the special permit to include UN-ISO 11120 cylinders to list of cylinders authorized for retest.
20351-M .....	Roeder Cartage Company, Incorporated.	180.407(c), 180.407(e), 180.407(f).	To modify the special permit to remove the requirement for periodic internal visual inspections and to authorize an additional tank dedicated to acetonitrile transportation.
20434-N .....	Cardinal Professional Products.	173.334(a), 173.334(b), 173.334(d), 173.334(e).	To authorize the transportation in commerce of up to 11.35 kg (25 lbs) of an organic phosphate compound (2,2 dichlorovinyl dimethylphosphate) in a DOT Specification 4BA240, 4BW240, 3A and 3AA cylinder equipped with an education (dip) tube without using an overpack.
20507-N .....	Energy, United States Dept of	173.302(a) .....	To authorize the transportation in commerce of non-DOT specification cylinders containing compressed hydrogen.
20511-M .....	Armotech s.r.o. ....	107.807(b)(1), 173.301(a)(1), 173.302(a)(1), 173.302(f)(1), 173.302(f)(2), 178.71(q), 178.71(t).	To modify the special permit to authorize leak testing outside Armotech's facility using Helium Gas Mass Spectrometry to leak test the cylinders.

## SPECIAL PERMITS DATA—GRANTED—Continued

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
20645–N .....	Walmart Inc .....	173.159a(c)(2), 173.185(c)(1)(iii), 173.185(c)(1)(iv), 173.185(c)(1)(v), 173.185(c)(3).	To authorize the transportation in commerce of lithium batteries with alternative hazard communication.
20670–N .....	Envases de Acero, S.A. de C.V.	173.302a(b)(2), 173.302a(b)(3), 173.302a(b)(4), 173.302a(b)(5), 180.205(c), 180.205(f), 180.205(g), 180.209(a), 180.213.	To authorize the transportation in commerce of certain DOT–3AX, 3AAX, 3T, 3AA and 3A cylinders. The cylinders (tubes) are retested by acoustic emission and follow-up ultrasonic examination (AE/UE) described in paragraph 7 below in place of the internal visual inspection and hydrostatic test required by § 180.205.
20681–N .....	Proserv UK LTD .....	173.302(a), 173.304(a), 173.201(c).	To authorize the manufacture, mark, sale and use of a non-DOT specification packaging conforming in part to DOT Specification 3A, except as specified herein, for the transportation in commerce of the materials authorized by this special permit.
20684–N .....	Linde Gas North America LLC	179.7, 179.300–15, 180.519(a).	To authorize the manufacture, mark, sale, and use of tank cars that use solid plugs in lieu of pressure relief devices and which are periodically retested in an alternative manner.
20696–N .....	The Procter & Gamble Company.	173.306(a)(5)(v), 173.306(a)(5)(vi).	To authorize the transportation in commerce of DOT Specification 2S and non-DOT specification plastic non-refillable inside containers that have been tested by an automated in-line pressure check in lieu of the test methods required in the Hazardous Materials Regulations (HMR), the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO TI) and the International Maritime Dangerous Goods (IMDG) Code.
20709–N .....	Daimler AG .....	172.101(j), 173.185(a) .....	To authorize the transportation in commerce of prototype and low production lithium ion batteries exceeding 35 kg by cargo-only aircraft.
20796–N .....	Sodastream USA, Inc .....	49 CFR Subparts C, D, E, F, and H.	To authorize the transportation in commerce of certain DOT 3AL, TC/3ALM and UN ISO 7866 cylinders that contain carbon dioxide, with alternative hazard communication.
20801–N .....	Walmart Inc .....	172.315(a)(2) .....	To authorize the transportation in commerce of limited quantities of hazardous materials with a reduced size limited quantity marking by motor vehicle and rail freight.
20807–N .....	Environmental Protection Agency.	49 CFR parts 171–180 .....	To authorize the transportation in commerce of hazardous materials used to support the recovery and relief operations from and within the Super Typhoon Yutu Response Area (Saipan, Tinian and Rota, CNMI), under conditions that may not meet the Hazardous Materials Regulations (HMR).
20811–N .....	Environmental Protection Agency.	49 CFR parts 171–180 .....	To authorize the transportation in commerce of hazardous materials in support of the recovery and relief operations from and within the California fire disaster areas in various parts of the state under conditions that may not meet the Hazardous Materials Regulations (HMR).

## Special Permits Data—Denied

20292–M .....	Nuance Systems LLC .....	173.181, 173.302(a), 173.187, 173.201, 173.211.	To authorize a new design of the approved cylinders which will operate at higher temperatures and authorize additional new cylinders.
20623–N .....	Praxair Distribution, Inc .....	172.203(a), 180.205(f), 180.205(g), 180.209(a), 180.209(b), 180.209(f), 180.213(f).	To authorize the transportation in commerce of DOT 3AA cylinders that have been requalified using ultrasonic examination every 15 years in lieu of internal inspection and hydrostatic testing every 5 years.
20701–N .....	Zhejiang Meenyu Can Industry Co., Ltd.	173.304(a), 173.304(d) .....	To authorize the manufacture, mark, sale, and use of non-DOT specification receptacles containing certain compressed and liquefied gases.
20710–N .....	Kerr Corporation .....	173.4a(c)(2), 173.4a(e)(2) .....	To authorize the transportation in commerce of excepted quantities in alternative packagings and greater quantities.

## Special Permits Data—Withdrawn

[FR Doc. 2018-27112 Filed 12-13-18; 8:45 am]

BILLING CODE 4909-60-P

**DEPARTMENT OF TRANSPORTATION****Pipeline and Hazardous Materials Safety Administration****Hazardous Materials: Notice of Applications for Special Permits**

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** List of applications for modification of special permits.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety

has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

**DATES:** Comments must be received on or before December 31, 2018.

**ADDRESSES:** Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

**FOR FURTHER INFORMATION CONTACT:** Ryan Paquet, Director, Office of Hazardous Materials Approvals and

Permits Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH-30, 1200 New Jersey Avenue Southeast, Washington, DC 20590-0001, (202) 366-4535.

**SUPPLEMENTARY INFORMATION:** Copies of the applications are available for inspection in the Records Center, East Building, PHH-30, 1200 New Jersey Avenue Southeast, Washington, DC or at <http://regulations.gov>.

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on November 29, 2018.

**Donald P. Burger,**  
Chief, General Approvals and Permits Branch.

**SPECIAL PERMITS DATA**

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
7945-M .....	MEGGITT SAFETY SYSTEMS, INC.	173.304a(a)(1) .....	To modify the special permit to authorize additional Class 2.2 hazmat to the permit. (modes 1,2,3,4).
12184-M .....	WELDSHIP CORPORATION	173.302a(b)(2), 173.302a(b)(3), 173.302a(b)(4), 173.302a(b)(5), 180.205(c), 180.205(f), 180.205(g), 180.205(i), 180.209(a), 180.213.	To modify the special permit to remove the year restriction from the required CGA pamphlet. (modes 1,2,3,4).
14857-M .....	WESTERN SALES & TESTING OF AMARILLO INC.	180.209 .....	To modify the special permit to clarify the neck flange/sleeve inspection and cleaning requirements and to authorize additional Class 2.1 and 2.2 hazmat. (modes 1,2,3,4).
20378-M .....	LG CHEM .....	172.101(j) .....	To modify the special permit to authorize fiberboard boxes as outer packaging. (mode 4).
20500-M .....	CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES CONTROL.	.....	To modify the special permit issued on an emergency basis and make it permanent. (mode 1).
20584-M .....	BATTERY SOLUTIONS, LLC	173.185(f)(3), 173.185(c)(1)(iii), 173.185(c)(1)(iv), 173.185(c)(1)(v), 173.185(c)(3), 173.185(f).	To modify the special permit to authorize the use of thermally insulating fire suppressant material in a sufficient quantity and manner that will suppress lithium battery fires, heat and smoke and absorbs the smoke, gases and flammable vapors and electrolytes during a thermal runaway incident. (modes 1,2,3).
20612-M .....	WILCO MACHINE & FAB, INC.	178.345-7(a)(1), 178.345-3(a).	To modify the special permit to remove the annual testing requirement for some specific tanks. (mode 1).

[FR Doc. 2018-27111 Filed 12-13-18; 8:45 am]

BILLING CODE 4909-60-P

**DEPARTMENT OF TRANSPORTATION****Pipeline and Hazardous Materials Safety Administration****Hazardous Materials: Notice of Applications for Special Permits**

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** List of applications for special permits.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor

vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

**DATES:** Comments must be received on or before January 14, 2019.

**ADDRESSES:** Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-

addressed stamped postcard showing the special permit number.

**FOR FURTHER INFORMATION CONTACT:**

Ryan Paquet, Director, Office of Hazardous Materials Approvals and Permits Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH-30, 1200 New Jersey Avenue Southeast, Washington, DC 20590-0001, (202) 366-4535.

**SUPPLEMENTARY INFORMATION:** Copies of the applications are available for

inspection in the Records Center, East Building, PHH-30, 1200 New Jersey Avenue Southeast, Washington, DC, or at <http://regulations.gov>.

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on December 7, 2018.

**Donald P. Burger,**  
Chief, General Approvals and Permits Branch.

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
<b>Special Permits Data</b>			
20802-N .....	EXXON MOBIL CORPORATION.	173.242(c) .....	To authorize the transportation in commerce of a Division 4.2 material in 35 non-DOT specification portable tanks conforming to the requirements of a UN T21 portable tank except for the thickness of the bottom conical head. (modes 1, 2, 3)
20803-N .....	HYPERCOMP ENGINEERING, INC.	173.302a(a)(1) .....	To authorize the manufacture, mark, sale, and use of a non-DOT specification composite overwrapped pressure vessel containing hydrogen. (modes 1, 2, 3, 4)
20804-N .....	HYPERCOMP ENGINEERING, INC.	173.302a(a)(1) .....	To authorize the manufacture, mark, sale, and use of non-DOT specification composite overwrapped pressure vessels containing oxygen. (modes 1, 2, 3, 4)
20805-N .....	LG CHEM .....	172.101(j) .....	To authorize the transportation in commerce of lithium batteries exceeding 35 kg by cargo-only aircraft. (mode 4)
20806-N .....	JAGUAR INSTRUMENTS INC.	173.302a(a)(1), 173.304a(a)(1).	To authorize the manufacture, mark, sale, and use of non-DOT specification nickel copper alloy 400 cylinders. (modes 1, 2, 3, 4)
20808-N .....	INNOPHOS, INC .....	178.504(b)(9) .....	To authorize the transportation in commerce of UN 1A1 drums containing polyphosphoric acid in quantities that exceed the maximum mass authorize for steel drums. (mode 1)
20814-N .....	SAFT AMERICA INC .....	172.101(j) .....	To authorize the transportation in commerce of lithium batteries with a net greater than 35 kg aboard cargo-only aircraft. (mode 4)

[FR Doc. 2018-27110 Filed 12-13-18; 8:45 am]

BILLING CODE 4909-60-P

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

[Docket No. DOT-OST-2018-0151]

### Privacy Act of 1974; Department of Transportation, Office of the Secretary of Transportation; DOT/ALL-27; Department of Transportation Training Programs

**AGENCY:** Office of the Departmental Chief Information Officer, Office of the Secretary of Transportation, DOT.

**ACTION:** Correction to notice of a new System of Records.

**SUMMARY:** In accordance with the Privacy Act of 1974, the Department of Transportation's Office of the Secretary of Transportation (DOT/OST) issued a notice on November 27, 2018 to

establish a DOT-wide System of Records titled, "DOT/ALL-27, Training Programs." This notice also retired two existing DOT systems of records notices, however, there was a typographical error in the reference to one of the two systems identified for retirement. The notice should have identified DOT/RITA-O16, TSI Online Catalog and Learning Management System", not DOT/RITA-12, TSI Online Catalog and Learning Management System.

**FOR FURTHER INFORMATION CONTACT:** For questions, please contact: Claire W. Barrett, Departmental Chief Privacy Officer, Privacy Office, Department of Transportation, Washington, DC 20590; [privacy@dot.gov](mailto:privacy@dot.gov); or (202) 527-3284.

Issued in Washington, DC on December 11, 2018.

**Claire W. Barrett,**  
Departmental Chief Privacy Officer.

[FR Doc. 2018-27106 Filed 12-13-18; 8:45 am]

BILLING CODE 4910-9X-P

## DEPARTMENT OF THE TREASURY

### United States Mint

### Establish Pricing for 2018 United States Mint American Innovation™ Products

**AGENCY:** United States Mint, Department of the Treasury.

**ACTION:** Notice.

**SUMMARY:** The United States Mint is announcing the pricing for 2018 American Innovation coin products. These prices are listed in the table below.

Product	2018 Retail price
2018 American Innovation \$1 25-Coin Roll-P .....	\$32.95
2018 American Innovation \$1 25-Coin Roll-D .....	32.95
2018 American Innovation \$1 100-Coin Bag-P .....	111.95



Product	2018 Retail price
2018 American Innovation \$1 100-Coin Bag-D .....	111.95
2018 American Innovation \$1 Proof Coin .....	6.95

**FOR FURTHER INFORMATION CONTACT:**

Katrina McDow; Product Manager; Numismatic and Bullion; United States Mint; 801 9th Street NW; Washington, DC 20220; or call 202-354-8495.

**Authority:** Public Law 115-197

Dated: December 7, 2018.

**David J. Ryder,**

*Director, United States Mint.*

[FR Doc. 2018-27069 Filed 12-13-18; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF VETERANS AFFAIRS

### Notice of Availability of the Draft Programmatic Environmental Impact Statement (PEIS) for the West Los Angeles Medical Center Campus Draft Master Plan

**AGENCY:** Department of Veterans Affairs (VA).

**ACTION:** Notice of Availability.

**SUMMARY:** VA announces the availability of the draft PEIS for the VA West Los Angeles Medical Center Campus (WLA) draft Master Plan for public comment. The draft PEIS identifies, analyzes, and documents the potential environmental, cultural, socioeconomic, and cumulative impacts of the proposed improvements and alternatives for redevelopment as set forth in the WLA draft Master Plan.

**DATES:** Interested parties are invited to submit comments in writing on the WLA draft PEIS by January 29, 2019.

**ADDRESSES:** Written comments may be submitted through <http://www.regulations.gov>; by mail or hand delivery to the Director, Office of Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue NW, Room 1063B, Washington DC 20420; or by fax to 202-273-9026. Comments should indicate that they are submitted in response to "Notice of Availability of the Draft Programmatic Environmental Impact Statement (PEIS) for the West Los Angeles Medical Center Campus Draft Master Plan". During the comment period, comments may also be viewed online through the Federal Docket Management System at [www.regulations.gov](http://www.regulations.gov). The draft PEIS and other draft Master Plan

documentation is available for viewing on the website [www.losangeles.va.gov/masterplan/](http://www.losangeles.va.gov/masterplan/). Copies of the draft PEIS are also available at the following locations:

- Los Angeles City Hall, 200 N Spring Street, Los Angeles, CA 90012, (213) 473-3231.
- Donald Bruce Kaufman: Brentwood Branch Library, 11820 San Vicente Boulevard, Los Angeles, CA 90049, (310) 575-8273.
- West Los Angeles Regional Library, 11360 Santa Monica Boulevard, Los Angeles, CA 90025, (310) 575-8323.
- Westwood Branch Library, 1246 Glendon Avenue, Los Angeles, CA 90024, (310) 474-1739.
- VA GLAHS WLA Medical Center: 11301 Wilshire Boulevard, Los Angeles, CA 90073, Building 500/Room 6429K.

**FOR FURTHER INFORMATION CONTACT:**

WLA draft PEIS team, VA Greater Los Angeles Healthcare System, at the address above, or by email to [VHAGLAMasterPlan@va.gov](mailto:VHAGLAMasterPlan@va.gov).

**SUPPLEMENTARY INFORMATION:** The draft PEIS was developed pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended (42 United States Code (U.S.C.) § 4321, *et seq.*), the Council on Environmental Quality's (CEQ) regulations for implementing the procedural provisions of NEPA (40 Code of Federal Regulations (CFR) Parts 1500-1508), and VA's NEPA regulations titled "Environmental Effects of the Department of Veterans Affairs Actions" (38 CFR part 26). The draft PEIS uses the substitution approach for integrating compliance with Section 106 of the National Historic Preservation Act into the NEPA process in accordance with § 36 CFR 800.8(c), and in keeping with the joint CEQ-Advisory Council on Historic Preservation guidance on how to use NEPA in lieu of the procedures set forth in § 36 CFR Part 800.

WLA is one of the largest medical center campuses in the VA system, providing a full range of medical services to eligible Veterans, including state-of-the-art hospital and outpatient care, rehabilitation, residential care, reintegration services, and long-term care. The draft Master Plan released on January 28, 2016, evaluates potential ways to reconfigure and redevelop the existing WLA Campus and provide additional housing to homeless Veterans to better serve the health care needs and distribution of Veterans in the GLAHS service area over the next 20 to 30 years. VA has prepared this draft PEIS to identify, analyze, and document the potential environmental, cultural, socioeconomic, and cumulative impacts of the proposed improvements and alternatives for redevelopment of the

WLA Campus as set forth in the draft Master Plan. The proposed improvements and redevelopment constitute the proposed action.

The purpose of VA's proposed action is to revitalize the WLA Campus to provide a safe and vibrant Veteran-centric community where Veterans in the Greater Los Angeles area can access improved and expanded services. The proposed action is needed because the existing campus infrastructure is not sufficient to serve the current and future needs of the regional Veteran population, including health care, homeless housing, and supportive services. It would involve multiple concurrent and/or subsequent revitalization projects. The projects would provide modernized facilities that are compliant with applicable seismic, accessibility, and life safety requirements; facilitate access to care by consolidating services and functions; and respond to the housing and support needs of vulnerable Veterans populations, including Veterans who are homeless, aging, female, or have significant medical needs. Following a public scoping process from May 19, 2017, to June 30, 2017, VA refined its originally proposed alternatives to be analyzed in the PEIS to the following:

- **Alternative A:** Renovation of select existing buildings for same or new functions; up to 821 new units of supportive housing for homeless Veterans created.
- **Alternative B:** Demolition of select existing buildings and relocation of existing tenants and services to other remaining buildings; no new units of supportive housing for homeless Veterans created.
- **Alternative C:** Demolition and replacement of select existing buildings and additional construction of new buildings on open land; up to 1,622 new units of supportive housing for homeless Veterans created.
- **Alternative D:** Renovation or demolition/replacement of select existing buildings and additional construction of new buildings on open land; up to 1,622 new units of supportive housing for homeless Veterans created.
- **Alternative E:** No action or the "status quo" alternative.

Environmental topics that have been addressed in the draft PEIS include the following: Aesthetics; air quality; cultural resources including historic properties; geology and soils; hydrology and water quality; wildlife and habitat; noise and vibration; land use; floodplains, wetlands, and coastal zone; socioeconomic; community services; solid waste and hazardous materials;

transportation and parking; utilities; and environmental justice. Cumulative impacts resulting from VA's proposed action and other concurrent projects, such as, but not limited to, LA Metro's Purple Line Extension Project, are also identified and analyzed. Relevant and reasonable mitigation measures that could alleviate environmental effects have been considered and are included where relevant within the draft PEIS.

**Signing Authority**

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Robert L. Wilkie, Secretary, Department of Veterans Affairs, approved this

document on December 7, 2018, for publication.

Dated: December 7, 2018.

**Luvenia Potts,**

*Program Specialist, Office of Regulation  
Policy & Management, Office of the Secretary,  
Department of Veterans Affairs.*

[FR Doc. 2018-27126 Filed 12-13-18; 8:45 am]

**BILLING CODE 8320-01-P**

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